International Arbitration as a Substitute for War between Nations

BY

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Mr. Andrew Carnegie, LL.D., Rector of the University of St. Andrews, offered, in Session 1906-1907, five prizes for Essays on "International Arbitration as a Substitute for War between Nations."

The First Prize was gained by Mr. Russell Lowell Jones, M.A.

PREFACE.

I HAVE hopes that this volume, the work of a young graduate of St. Andrews, may prove to be a serious contribution to the subject of which it treats. It is the outcome of an amount of labour and original study unusual, I venture to think, in a Prize Essay. But my estimate of its value is based not so much on the author's knowledge, although I think that this is remarkable, as on his straightforwardness and common sense in dealing with the essentials of his problem. He has taken, as it appears to me, a strong, sagacious, and independent line, setting aside declamations, and addressing himself with notable vigour and lucidity to determining the question "What has in past history been done by international arrangements in the cause of peace? what is being done? and what, therefore, may we reasonably anticipate as possible to be done?" I have found his study valuable and helpful to myself, and I am inclined to think that very many of the public, interested in so great a subject, but lacking precise and expert knowledge, will find it valuable and helpful, as I did.

BERNARD BOSANQUET.

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INTRODUCTION.

In the following essay I have attempted to deal with International Arbitration in a new way. The object I had in view throughout was to give as far as was in my power an outline of a rigorous reconstruction of the evidence. A sympathetic and thorough review of the arguments advanced by the various sections of those who have the abolition of war sincerely at heart has led me to consider that much of their pleading is rendered nugatory by violent declamation and useless denunciation. Those who have traced the history of Peace Societies, who have perused their tracts and annual reports, will see much to approve in that criticism of Mr. Ryder's that "Jingoism flourishes on nothing so well as upon "[1] such publications as they issue. I will cite one instance which, to avoid the charge of being captious, I have selected from a modern report of a Peace Conference. At Glasgow in 1901 Mr. W. T. Stead said, "I propose to add some explosive matter to the resolutions. The Hague Conference having recommended four different methods of avoiding war, . . . the Congress declares

[1] "Ethics of War." H. W. Ryder. *19th Century.*

that any State by refusing to adopt any one of them when proffered by its opponent loses its right to be regarded as a civilised power. In such a country, excommunicate of humanity, the Congress is of opinion that, while the war lasts, no public religious service of any kind should be held that is not opened by a confession of blood guiltiness on the part of that nation and closed by a solemn appeal on the part of the congregation to the Government to stop the war by the application of the Hague methods. This amendment is based upon the very simple and fundamental principle that no person should go before his God and ask a blessing with his hands dripping with his neighbour's blood. What is the good of the resolutions passed at the Hague when not one of us has the heart of a mouse to say Damn! Damn!! Damn!!! on all the people who carry on war and bring down the curse of God on our heads."[1]

Such utterances, and there are many more, do great harm to the cause of peace. The quiet workers in the field of pacific means of solving international disputes find themselves classed with men whose narrowness of outlook is only exceeded by the violence of their rhetoric. That this feeling of irritation against such futile declamation is widespread may be noted on all hands. M. de Maartens, the great jurist, fitly called the Lord Chief Justice of Christendom, is convinced that "the Utopians are the most dangerous enemies of the progress of International Law."[2] Our first conclusion, then, is that all future treatment of the problem must be vitiated neither by an extravagant Utopianism nor by an exaggerated sentimentality. Before leaving this section of peace advocacy we may note the sort of antagonism it raises. Joseph Conrad is the mouthpiece

[1] Proceedings of Glasgow Peace Conference, 1901.

[2] International Arbitration and the Peace Conference at the Hague. *North American Review*, No. 69, p. 604.

of the anti-Utopians in such a sentence as the following: "The dreams of sanguine humanitarians raised almost to ecstasy about the year 'fifty of the last century by the moving sight of the Crystal Palace—crammed full with that variegated rubbish which it seems to be the bizarre fate of humanity to produce for the benefit of a few employers of labour—have vanished as quickly as they have arisen. The golden hopes of peace have in a single night turned to dead leaves in every drawer of every benevolent theorist's writing table."[1]

Leaving in abeyance for the meantime our future task of pointing out the inestimable service of the great advocates of peace in the past, and the useful work done by the societies they organised and inspired, we must make of our criticism a guide-post to a sober treatment of our subject and a warning against any such "bastard enthusiasm"[2] as will only serve to discredit our conclusions among the thoughtful and be fuel for the ridicule of the Jingo. There are minor faults of this class of propaganda which we can only enumerate, not from any love of destructive criticism, but to help us to avoid them. In addition to the violent language and excessive sentimentality there is a great parade of argument against minor manifestations of war, and complete neglect to attack the central problem. There is a tendency to make unwarrantable assumptions, such as, for instance, upon the attitude of the early Christian writers[3] and a futile simplification of the points at issue.

[1] *Contemporary Review*, 1905. 2, I. Joseph Conrad.

[2] H. W. Howarth: "Plain words about the Czar's Gospel of Peace." *19th Century*, No. 45.

[3] "Ethics of War." *19th Century*, No. 45, pp. 718-19. Cf. also "If it is of importance that those who have Christian objects at heart should understand one another, should agree where they can, and, where they cannot, at least have a distinct idea of their line of difference, then it is everyone's concern that this extravagant misconception of the doctrine of Christ and of the early Christian Church should be finally evicted from the manifestoes of the seekers after peace." See below.

which are indeed of heart-breaking complexity and difficulty. Nothing will be gained by assuming—as is still done in all sincerity—that international strife is exactly analogous to one man clubbing another, and is, therefore, the act of maniacs and prize-fighters. Finally, peace societies are far from being happy families, as witness the struggle upon such a point as the question of sanctions for arbitral decisions. Hence, then, the line of progress to a true visualisation of the forces working for arbitration, and those inimical to it, is not to walk in the path of the "amis de la paix," but to correct their undoubted enthusiasm and idealism by the sober methods of modern scientific thought and by the exigencies of practical possibility.

Salvation not lying there, we must turn to the other sections of the great army of peace workers. This country does not seem to shine in matters requiring abstract thought or a feeling towards generalisation. M. Boutlemy,[1] in urging this criticism, has other fields of intellectual effort in mind, but it is valid also for the subject of arbitration. The "Arbiter in Council,"[2] published this year, is the only considerable literary document of any value bearing directly upon our problem that is extant in England. Of course I have not forgotten Dr. Darby Evan's "International Tribunals," which deservedly was recognised by the Hague Conference, but that work is only material for the work that should be written. These remarks are made to meet the criticism that only foreign works are quoted in the review I am going to make of quasi-scientific arbitration literature. But so it is. England has done much work for peace in the past and in the present; individual Englishmen have organised to secure peace, *e.g.*, Cobden and Henry Richard, and in our day Mr. Cremer, M.P., the Winner of the Nöbel

[1] "The English People"—*passim.*

[2] Macmillan & Co. 1906.

Prize, but polemically, or even scientifically, English published work is of little or no value.

France, however, has a flood of formal work upon the problems arising out of war, and the other countries of the Continent do not lag far behind. Revon's "L'Arbitrage International," Dreyfus' "L'Arbitrage International," Rouard de Card's "Les Destinées de l'Arbitrage International," the works of Molinari, such as "La Grandeur et Décadence de la Guerre," and many more keep the French people constantly in mind that there is a problem to be solved with regard to war and its possible substitution. We cannot enumerate the other countries singly, but a citation of well-known works will prove the contention set forth above—that England is far behind in this respect. There is Goblet D'Alviella's "Désarmer ou Déchoir," L. A. Kamarovsky's "Le Tribunal International," Bara Louis' "La Science de la Paix," Anitchow's "War and Labour," Baroness Von Süttner's "Lay down your Arms," Bloch's seven volume work on the war of the future, and Tolstoi's various contributions. America, even, seems to be leaving us behind. Trueblood[1] and Holls[2] and Moore[3] represent three sections of the thoughtful work upon aspects of arbitration, while review articles are extant in great numbers.

Such a huge mass of work should yield light and leading to the student, but unfortunately it does not. Scarcely two of the works mentioned have a common basis, while the most divergent opinions upon the greatest questions are to be found. It is discouraging to try to find a greatest common measure for them all, much less a least common

[1] "Federation of the World, with Bibliography." Trueblood.

[2] "Conference at the Hague." 1900. Holls.

[3] "History of International Arbitrations to which the U.S. has been a party. 1898. 2 vols.

multiple. For example, the question "Is war in the future a possibility or not?" is answered by Bloch in three thousand pages and as many diagrams, in the negative. This attitude is that war will kill war, and is shared by Kamarovsky,[1] but Anitchow has covered many sheets of paper to show that such is not the case. He says, "War will disappear in the same way as slavery disappeared, not from causes which depend very little or not at all on human will, but from the effect of conscious efforts made with a view to eradicating from contemporary life much that at present breeds and nourishes enmity among civilised nations."[2] But those who make such "conscious efforts" fall under the rough-thonged lash of Tolstoi. "They deliberate upon the question," he writes, "as to what will be the best way of persuading the brigands who live from pillage to abandon theft and become peaceful citizens. Then they lay deep questions before one another. Finally, they apply themselves to resolving the problem of war as if there were a problem in liberating a deceived people from the fraud which they see clearly."[3] And so it stands. Confusion of facts and wishes, of vague hopes and optimistic prophecies inevitably results from a study of the literature unless corrected by a knowledge of history and a measured sense of the possible and probable that such investigation will induce.

Hence, then, our search has brought us up against the works on Arbitration which systematically trace the evolution of it and from the review of its progress try to forecast its future position. There are three of any importance—important, that is to say, for modern practical

[1] "Le Tribunal International."

[2] "War and Labour." Michael Anitchow.

[3] "Delenda est Carthago." Tolstoi. Translated from "L'Humanité Nouvelle" for the *Arena*, No. 22, p. 202, cf. p. 204, where he calls them "modern Sadducees."

purposes. Kamarovsky's[1] great work was the spring of the other two. Revon's "L'Arbitrage International" appeared in 1892, and the same year saw Ferdinand Dreyfus' smaller work with a similar title appear. I owe great thanks to these three authors, whose enthusiasm is only equalled by the constraint they put upon themselves and the temperate optimism of their forecasts.

But a serious criticism has to be urged against the fundamental idea underlying their whole treatment of the subject. They have fallen into the trap which Case, in the "Arbiter in Council," mentions in passing, but does not, unfortunately, treat fully. "In my humble opinion," he says, "the mistake that writers on International Arbitration most commonly make is that of treating arbitration between States as an isolated fact, a subject by itself, whereas it is really a branch of a subject."[2] This is the rock upon which our three authorities have split, and their neglect to recognise the truth that Case enunciates vitiates not only the tone of their work but even their treatment of arbitration as an historical fact.

Even a casual survey of extant instances of the use of pacific machinery for the healing of international sores serves to show that they fall naturally into three great periods, each the culmination of a time of growth and development and in turn brought to decay through outside influences. The development of this idea forms the claim of this essay to a slight measure of originality and will be fully treated in the following pages, but meantime we must notice the improvement this scientific and natural grouping would have made in the works of Revon and his peers.

So difficult is it to escape from the arrangement indicated, that their treatment of the instances does show an indefinite

[1] Of course Kamarovsky writes in support of federation, but the criticism holds since a great portion of the volume treats of the history of arbitration.

[2] "Arbiter in Council," p. 350. Macmillan & Co.

tripartite division, but it is rather blurred than emphasised, and thereby the scientific value of the whole historical inquiry for modern purposes is lost. The real reason for this unsatisfactory treatment is that one and all have allowed themselves, despite the plain lesson that history affords, to treat the present time and the modern mass of references to arbitration in case of international difficulties as the culmination of a development which began with the decision given in the dispute between Artabazarnes and Xerxes in the time of Darius and ended with—had they been able to forecast it—the establishment of permanent arbitral machinery by the Hague Tribunal. Now, such a conception, in my humble opinion, is false. It can only come from reading history as history should not be read, and moreover precludes any scientific forecasts as to the future position of arbitration.

Thus Revon seriously stumbles in his treatment of the Greek instances of the use of arbitral courts and arbitrators, seems to treat the Middle Ages in a kind of half-hearted way and finally closes his initial period—Le Passé—without having pinned down one single useful lesson to help him in the two concluding portions. We may contrast this long laborious inane waste of paper with the splendid result which Case arrives at in a few pages in the "Arbiter in Council" from a learned analysis of the terms for arbitration and arbitrator in ancient and modern languages, viz., that arbitration was from the first a discretionary as distinct from a strictly legal judgment. Such a plain lesson would have redeemed from criticism Revon's long inquiry, and note that it was in his grasp to draw many such lessons from both the Greek Age and the Middle Age.

Thus, then, our course is determined. Instances of arbitral methods of solving international or interburghal, or even inter-baronial disputes, must be grouped as nature her-

self has grouped them. They must be looked upon as the results of forces which must be determined, as far as possible, by comparison with other periods. And lastly, each period must be forced to yield its own lesson. These unified results must then be made to serve as instruments for the discovery of the probable course of arbitration in the near future, and as tests of the validity of any theory we may have to examine.

A word before concluding. We have seen that the cause of Peace is seriously hampered by internal deficiencies. These may and must be cured but still there remain serious arguments to be met with from the outside. I do not refer to Jingoist absurdities nor to such elaborate apologies for war as Proudhon's " La Guerre et la Paix " nor Joseph de Maistre's "Soirées de St. Pétersbourg," still less the prison formulae, the shibboleths[1] of Nietzche, but such sane and serious problems with regard to the fundamental basis of arbitration as Mahan gives utterance to in " Lessons of the War with Spain " or as Holls touches upon in his " Peace Conference." It will not serve to imitate the ostrich and bury our heads in the sands of theory and leave such arguments unanswered. They call for either a reasoned assent or dissent and such I shall attempt to give.

[1] Max Nordau. *North American Review*, No. 69.

CHAPTER I.

The Age of War.

I.

Deep down as we can penetrate into the brutish conditions surrounding man's early existence, by inference from the survival of such tribes as the Juangs of Orissa, the Veddahs of Ceylon and the Aborigines of Australia, we never find him but as a member of an aggregate, bound to it by some bond of social consciousness. A long—centuries long—controversy has played about the question as to how these primitive societies were formed. The explanation is a simple one. Benjamin Kidd[1] shows that it must be ascribed to the play of an inexorable natural selection upon an accidental variation in man's mode of life. There having come into existence an aggregate, however loosely held together, the result inevitably must have been that the adhesiveness thus gained, the sense—weak though it might be—of unity and power that thus accrued, made for the continued existence of that aggregate and hence for the elimination of those non-social units which at this point fell under the ban of Nature as being inefficient and consequently incapable of surviving. The immediate instrument that brought about this accidental variation in the development of the species was fear. "Primus in orbe," we may with truth assert, "societates fecit timor." Such an acting cause being at the root of all social aggregates, we are in the beginning brought up against the strange dependence between internal unity and external hostility. Mr. J. M. Robertson, in his finely reasoned work,

[1] "Western Civilisation" and "Social Evolution."

"Patriotism and Empire," sums up the singular position thus[1]: "Go back as far as we will in history, by way either of records or of inference from what survives of the primitive, we find groups of people united by what a recent sociologist calls "consciousness of kind," and in virtue of that consciousness prepared to fight with other groups. The two tendencies, the cohesion and the repulsion, are strictly correlative: each involves the other. No law of human progression can well seem more sinister than this primal interdependence of love and hate, of good and evil, of union and destruction; and we shall do well to face it in all its grimness at the outset of our questioning. . . . Some marginal communities there may be which wage no wars, having enough to do to fight inclement Nature, and which are held together by the mutual goodwill born of continuous collective need, the stragglers being bound to perish: but in the average early tribe a main part of the force of cohesion was the spontaneous hostility to other tribes."

Savage man was free from that distinct mark of civilisation—private property. Indeed property in the true sense of the term was even lacking to the corporate body itself—either in the form of domesticated animals or of cultivated land. Man's activity was divided between two forms of war—war for food, *i.e.*, hunting, and war for the maintenance and security of his domain. Sir John Lubbock points out somewhere that whereas in modern European countries two hundred people can find a comparatively luxurious livelihood from one square mile of cultivated land, and in China a much larger number, in any region where the spoil of the chase is the only standby for man it requires ten square miles to support a single person. Hence we arrive at the conclusion, and in my opinion the

[1] Pp. 5-6.

only just conclusion, that in such a society as primitive man found to his hand, the war to hold his hunting fields free from usurpation was as rational, logical and necessary as his war upon the animals. Indeed, at this stage, the two species of activity are one, united by the instinct towards self-preservation and not inspired by any mere abstract love of bloodshed and cruelty. The argument based upon the peaceful conditions that surround the life of the Esquimaux[1] has been answered above in the quotation from Mr. Robertson. There the checks to population have always been so powerful that that competition for sustenance which sooner or later emerged among most savage tribes never appeared. The war of man upon man has been superseded by one between the elements and man. No, the fact seems undeniable, however we turn it over, that Nature has seen fit to use war as her instrument to secure the emergence from a multiplicity of types of various qualities, both physical and mental, only those that have proved by her tests their efficiency and superiority.

Before leaving this stage we may note a curious fact that M. Ch. Letourneau has found for us: "A l'origine des sociétiés humaines les clans étaient d'humeur plutôt pacifique et leur guerres avaient un caractère juridique. Telle est aujourd'hui la forme la plus ordinaire des conflits armés en Australie."[2] The first part of this statement is not true unconditionally. Prof. Jenks answers it thus: "If game is abundant and hunting grounds large in proportion to the population, distinct groups may exist side by side in a given area without conflict, but if game is scarce and the land thickly peopled—in Savage Society the two would probably go together—wars and murders are frequent."[3] This state-

[1] Cf. Sidgwick: "Development of European Polity," p. 14.

[2] "L' Evolution de la Guerre," p. 524 seq.

[3] Jenks: "History of Politics," p. 14.

ment supplies the conditions essential to the acceptance of the initial part of Letourneau's statement in as much as such juridical practices with regard to war as he mentions would tend to disappear entirely whenever the necessities of the tribes became sufficiently insistent. However, it is instructive to note here, deep down in man's history, the recognition that war is a judicial process and that in certain circumstances, *e.g.*, the claim to a hunting-ground, the only criterion open to primitive man of the justice of the claim was the successful upholding of it in the court of war. Though the whole argument so far is a concession to those who uphold the theory of Force, we must note the condition present that cannot be alleged of any subsequent period, viz., that the impelling motive is one of life and death in its most literal sense, and that such a sanction only can give man the right as a moral being nakedly to resort to force without having exhausted all possible pacific means. Force once was right we may grant, but Rousseau's maxim, 'le plus fort n'est jamais assez fort pour être toujours le maître, s'il ne transforme sa force en droit et l'obéissance en devoir'[1] must be pondered by any such modern worshipper of force as Mr. Jules Lemaître who, in his adoration of the "Sword of Salvation," wholly forgets it.

II.

We must now leave behind the Slough of Despond which man took ages of time to cross—a weary and well nigh hopeless journey, unproductive of aught that we love to dwell upon but which must be conceived as the ground wherein the tree of civilisation is planted. Primitive man and savage society give place to the definite and historical organisations which are marked by two distinct features—

[1] Rousseau. Contr. Soc. 1. ch. 3.

variations which nature elected to preserve, viz., the domestication of animals and the adoption of agriculture.

There are here, it is true, two distinct phases of development each with its own proper influence upon the social organisations in which it took place, but for our purpose it is competent to treat them together as one step. Sociologists[1] have emphasised of late the immeasurable consequences that have ensued upon the recognition of property, and we have an analogous duty to perform in laying stress upon the immense result that the possession of property has had upon the nature of war. We here begin to pierce the mystery of war—the raison d'être of that "irreducible antinomy."[2] It is, among nations which have attained to the stage of development indicated—an *enterprise*[3] and like all enterprises is called forth by and is undertaken for a profit.

To clear our ideas we will resume the case of primitive man for a moment. First we must note nature needs a spur. At the earliest period this spur was provided with two wheels—the incessant battle with the great brutes for the actual food with which to hold body and soul together from day to day, and the no less constant struggle to preserve the arena free from intruders. Secondly, from the point of view of the individual savage these struggles admitted of no questioning—both species being at once necessary and rational. Thirdly, from the evolutionary and historical standpoint, war was at this stage essentially useful to the species, in that it admitted into future centuries only those whose physical, mental and moral qualities had stood this severe test.

[1] Cf. Carpenter: "The disease of civilisation, etc."

[2] Revon: "L' Arbitrage International."

[3] This conception is that of Gustave de Molinari.

Now, however, man does not directly war for his daily existence. His position as member of a corporate body, which we have supposed is possessed of domesticated animals and cultivated lands, assures him both a degree of security and a more or less sufficient supply of every-day necessaries. War to him implies joining hands with a co-operative body which undertakes an invasion impelled by the meaner and less necessitous motive of greed. This baneful passion would never have been aroused had not some groups taken to domesticating animals in preference to slaughtering them. Once property came into existence this lust of unlawful possession is explained. The change is thus epigrammatically stated by Letourneau: "La guerre perdit toute apparence juridique: le vol en devint le but principal." Robbery was the end to be achieved, but ruthless slaughter always accompanied its accomplishment. The reason is plain. The instinct, which descended from the days of the tribal pack, of exterminating all "strangers" was ingrained; it had become a lust of bloodshed which was gratified to the full. The return to the enterprise, if successful, was reckoned in land and head of cattle, the invader failing to recognise that man himself was the most valuable of all chattels, possessing both intelligence and powers of reproduction. In the end, however, this type of conquest began to vary and nature selected, as being most efficient, that method of exploitation which preserved the conquered race for production. Destruction, once so essential, now became useless. What was a law to the Iroquois of North America a few years back was an immoral and cruel practice in Europe twenty-two centuries ago. The world got rid of wholesale butchery by hanging round its neck the mill-stone of slavery.

Man was recognised as an instrument of production and the invading race spared the conquered natives as being a

capital sum of immense value and of relative permanence, and the exploitation of this living wealth became the end and aim of the State that arose upon the ruins. We have, it must be noticed, now come into touch with a species of war which cannot in itself be recognised as moral or necessary. Moral it cannot be, since it springs from an immoral or inferior passion, and necessary it was not, since the conditions of life were still sufficiently arduous to serve as the pruning knife of national selection. But evolution always finds its justification in the future. In the words of Benjamin Kidd, the projection is constantly forward and we shall soon find the rationality of such wars of conquest to be in the necessities which arose from a huge system of exploitation.

The variation in warfare just outlined had momentous results. It reacted upon the corporation of warriors by revealing unexpected perils which it was essential should be met. In such a social organism as that of the Spartans, for instance, it is evident that the strata of population which have been reduced to subjection are in themselves a danger at once constant and great. It is wealth and the cares that the possession of wealth produces that fall on the shoulders of the dominant race. Thus the latter's first need is security, and that too of a double nature—protection and insurance against being dealt with as they dealt with their own subject population, and also against the practicability of a successful upheaval from below within their own boundaries.

Nature has started upon her second task—the provision of security, and the method adopted can be seen with delightful clearness among the Lacedaemonians. They, after the conquest, found themselves assured against want of food, provided they could maintain the *status quo*. The organisation evolved was, as distinguished from their

previous condition, essentially an artificial one. The fear of being despoiled inevitably led to that iron system of discipline, nurtured in the phiditia and on the drill ground, in that infamous secret service and in constant campaigning, which prevented the efficiency of Sparta from being weakened as would certainly have been her fate had not this artificial organisation supplied the place of the more insistent, but now eliminated, motive of want.[1] It is interesting to reflect that those constitutions of ancient Hellas which, by their delicate mechanism and clear political thought, have earned our admiration sprang directly from that least defensible species of war—conquest. War is no lovely thing, but many of its fruits go far to redeem it!

Our analysis now permits us to see in its true perspective the natural estimation that warfare and the practice of arms has gained. It is worthy of note because many foolish explanations of it are to be found in peace literature. To-day it is in great measure an atavistic trait that still finds room to expand—a relic of long generations of martial ancestors impressed deeply upon our characters—but in the stage of society we are now discussing this estimation was no relic, but a live and real result of natural processes. The most essential need of the time, we say, was an effective fighting organisation and any quality which would tend in any eminent degree to bring about this martial efficiency could not fail to attach to itself all the sanctions that the instinct of union possessed. The army supplied the most urgent need of society—preservation against dispossession and extermination.

[1] Compare Bury, pp. 131 and 132: "Thus relieved from the necessity of gaining a livelihood, the Spartans devoted themselves to the good of the State, and the aim of the State was the cultivation of the art of war. Sparta was a large military school. Education, marriage, the details of daily life, were all strictly regulated with a view to the maintenance of a perfectly efficient army."

The centuries to come are the arena in which Nature fights her great battle. She seeks by devious paths and mysterious ways to provide, amidst the forces of disorder and lawlessness, breathing spaces in which man may make a further step towards a more rational life. We shall have to follow this march hereafter with the help of our analysis, which, briefly stated, is as follows :—Our first conclusion is that war in its origin is transposable, for the purpose of finding its essence, with hunting—and where followed by cannibalism it is the chase and nothing more. Our second is the conception of war as "le vol," as Letourneau frankly states it. This stage only finds justification in being the beginning of the conscious need for security and deliberate organisation to secure it. Thus far, war is in the ascendant, a phenomenon of the social organism that makes for progress and efficiency, and is not yet to be condemned as anachronistic and injurious.

We are now in a measure armed and ready to take part in modern controversy. Should our conclusions so far be true, it must appear that the apologists for war have a modicum of truth in their panegyrics. Proudhon has been accused of insane raving in such a passage as this : "En mangeant les vaincus, les Iroquois ne faisaient que pousser à l'outrance l'arrêt de la victoire, arrêt necessairement juste et aux termes auquel l'Etat du vaincu doit être absorbé par celui du vainqueur."[1] A morbid sentence enough, but still, in the main, true of the time and place. It is just this loose inference from truth at one time and at one stage of development to truth at another time and another stage that enables us to reject for to-day any wholesale justification of war. Gladly, however, can we cry out against such a rant as the following : "La guerre est divine en elle-même parce qu'elle est un loi du

[1] La Guerre et la Paix.

monde. La guerre est divine dans la gloire mystérieuse qui l'environne et dans l'attrait non moins inexplicable qui nous y porte. La guerre est divine dans la protection accordée aux grands capitaines, même aux plus hasardeux qui sont rarement frappés dans les combats et seulement lorsque leur renommé ne peut plus s'accroître et que leur mission est finie. La guerre est divine par la manière dont elle se déclare : combien ceux qu'on regarde comme les auteurs de la guerre sont entrainés par les circonstances. La guerre est divine par ses resultats qui échappent absolument aux speculations humaines."[1] What a tissue of bizarre absurdity. Comment is needless. Proudhon and de Maistre in France and James Ram[2] in our own country uphold this theory of the divinity of war, which is meaningless and incoherent. Further examination would be futile and the reader must accept the quotation from de Maistre as fairly typical of the school.

[1] Les Soireés de St. Pétersbourg. Joseph de Maistre. Revon also has a criticism of the "Divinity of War." Op. cit. Chapter I.

[2] "Philosophy of War." Mr. James Ram 1878.

CHAPTER II.

The First Great Age of Arbitration.

I.

Historical development in Europe touches in its earliest stages the fringe of the great Empires of the East. The Croesus legend formed a link between the past of western civilisation and the Orient. "While," says Bury, "the Greeks were sailing their own seas and working out in their city states the institutions of law and freedom, untroubled by any catastrophe beyond the shores of the Mediterranean, great despotic kingdoms were waxing and waning in the East."[1] Assyria rose and fell and out of the ruins sprung the mighty empire of the Medes. Beyond illustrating our analysis of war these huge top-heavy creations will not retain us long. Strife, with many fluctuations and set-backs, was working for the amalgamation of large tracts wherein security might stretch its aegis over many peoples. But security, though best assured where the political sway is over a wide extent, must needs have a social system that is relatively permanent and stable. This stability the East was tending towards, and the issue—owing to peculiarly unfavourable influences—remained for long centuries in doubt. Pacific tendencies, therefore, if born, were soon stifled. Though many of the religions of the East seem to have kindled and nurtured a glimmer of conscious peaceful aspiration, disintegrating influences were too powerful for it, and any "rapprochement" between separate political units was not to be looked for. Hostility, active or passive,

[1] J. B. Bury. "History of Greece," p. 219.

was the normal state of international relations. These huge pyramids, tilted on their apex, were first and last military. Those not powerful enough to exploit their neighbours endeavoured to preserve themselves from being despoiled. Monarchy, if absolute, is always warlike, as the period of the consolidation of modern European nations fully demonstrates.[1] The lives and property of whole peoples depend upon the whim of their rulers, and nowhere was this more unreservedly true than in the East. Was it not an Oriental emperor who replied to the German chieftain, on being challenged to single combat, "A smith who has tongs does not pull out the iron with his fingers!" The law of evolution works strangely, but ever for the future. No sanction is discoverable for the sufferings of the slaves of Xerxes unless we recognise in their unhappy lives an essential element to the onward progress of civilisation.

The Eastern empire, then, was a huge camp, organised for conquest. With this in mind, we may take Merignhac's summation as, on the whole, just. "Exact historical ideas," he writes, "on the subject of international arbitration among the peoples of the East are somewhat deficient."[2] The apologetic "somewhat" is delightful. Merignhac uses it, however, because he, like Revon, found two examples of arbitration belonging to this period chronicled by his authorities, and must needs repeat them. There are, however, serious objections to both instances upon the ground of historical improbability. The first arises out of that naïve story of the settlement by a dispossessed Spartan king of the succession to the throne of the great Persian Empire. Demaratus' intervention in this matter must, by all canons of historical criticism, be regarded

[1] See Molinari op. cit. *passim*.

[2] Merignhac. "Traité théorique et pratique de l' arbitration International."

as purely fictitious. It is probable, too, that the conclusion of the story is equally apocryphal, though Justinian, and not Herodotus, must be held responsible. The tale is that, on the death of Darius, the settlement of Demaratus was called in question and that Hystaspes in his capacity as uncle to the two contestants, Xerxes and Artaphernes, settled the difficulty.[1]

It is comforting to note that Revon wakes up to the fact that this instance, cited with parrot-like promptness by all writers on arbitration since Barbeyrac mentioned it, is merely, if correct, the case of a relation solving a family difficulty, and therefore unworthy of serious consideration.

The next was fathered by Grotius in his chapter "De Arbitriis." Cyrus, according to Xenophon, had a difference with the king of Assyria. The solution of this was left to a Prince of India.[2] Now this may be a strong argument for the familiarity of a Greek with the idea of arbitral awards, but cannot, owing to the historic worthlessness of the document in which it is chronicled, be accepted as true. Yet our historians shuttle-cock it back from one to another.

The last we have to note is more original and of more value—if true, which again cannot be predicated with any certainty. Herodotus relates that after the defeat of the Ionians in their ill-starred revolt, Artaphernes, Satrap of Sardis, sent for the deputies of the city and made them sign a contract or treaty to the effect that, in case of differences arising, they would settle them by law rather than by means of arms.

All this leads nowhere. The result is purely negative, as could be guessed from the nature of the States concerned. The conditions being totally unfavourable it is quite

[1] Barbeyrac. "Histoire des ancient traités," 1739. I. Art 107, p. 86.

[2] Xenophon, cited, Grotius, op. cit., quoted, D. Evans, International Tribunals.

unnecessary to attempt to find arbitration flourishing.

The people of Israel must be dismissed in a few words, but this is less to be regretted because the temper of the Old Testament is familiar to everyone. We may cite a passage fondly quoted in many a peace tract: "And He shall judge among the nations, and shall rebuke many peoples; and they shall beat their swords into plowshares and their spears into pruning hooks: nation shall not lift up sword against nation, neither shall they learn war any more."[1] The real character of this prophecy is not *prima facie* evident, but it may be understood in part by supplementing it with "And in that day there shall be a root of Jesse, which shall stand for an ensign of the people: to it shall the Gentiles seek and his rest shall be glorious"; and also "And He shall set up an ensign for the nations and shall assemble the outcasts of Israel and gather together the dispersed of Judah from the four corners of the earth."

The remark of Kamarovsky is just and interesting: "Il est à noter que la réalisation est signalée comme dépendant d'un autre événement la conversion de tous les peuples à la religion unique ce qui doit avoir lieu 'dans les derniers jours.'"[2] There is nothing to show, indeed, that the day of perpetual peace was even consciously located as to take place in this life at all. Revon is not far wrong in his estimate of the people of Israel when he says that the war-like image haunted them even to the point of colouring deeply their religion.

Christianity is by many writers exclusively identified with the progress of pacific ideas: they claim as peculiarly Christian that spirit of all-embracing love which permeates the New Testament. India is unfortunately for most an unknown land, but its literature contains chapters that

[1] Isaiah, II. 2.

[2] Kamarovsky. Op. cit. p. 258.

would lead us to reject the pharisaical claim of the writers mentioned. There is a sublime passage, for instance, quoted by Valmigère,[1] which forms part of a dialogue between Buddah and his disciple Purna when the latter was on the point of departing to preach the reformed religion among the barbarians. "What wouldst thou think," said Buddah to him, "if they fall into anger against thee, if they spurn thee with wicked and shameful words—for these men are reckless and cruel, violent and insolent?" "These are good men," replied Purna, "these men who cast shameful words at me, but neither beat me nor hurt me with stones." "But if they beat thee and hurt thee with stones, what wilt thou think?" "I shall think that these are good men, that these are kind men who beat me and wound me with stones but not with a sword." "But if with a sword?" "These are good men and kind men who wound me with a sword but do not kill me." "And should they kill thee?" "These are good and kind men who deliver me with so little suffering from this body full of sin." "'Tis well, Purna! Thou canst go into the lands of the barbarian. Go! Free them! free them! console them! console them!" This was the spirit that filled the Mahabhârata, the Laws of Manou and the legends of Buddah with a love so vast that it embraced humanity.

But we must pass on to Greece, where a firm footing is assured. We shall see the causes which produced "une floraison" of arbitration and shall show the absurdity of the opinion that "There is no instance of international arbitration before the 19th century,"[2] and perhaps also find some justification for the special point of view to be developed in this essay.

[1] Valmigère. De L' Arbitrage International, Paris 1898.

[2] Raymond Koechlin, He continues: ". . . As to the Middle Ages cases have been taken for arbitrations which in reality are only affairs of feudal law brought by the parties before their lords."

II.

When the tribes, which were afterwards the Greeks of history, broke off from their kinsmen in the heart of Europe and wandered with their flocks into their final abiding place there began a distinct development fruitful of consequence to the whole world. The sea engirdled this land of mountains and small valleys and it was the sea, which, in a double sense, formed the inspiration of the race. The waft of freedom and joyousness it bore into the flexible intellect of the Greek has often been remarked, but the other influence claims our attention. The sea made the Greek turn back upon himself and gave him time to bring out the latent common ties that were the heritage of his race. Not only so, but when colonisation became frequent it became an instrument for emphasising and developing a consciousness of the alien or barbarian. The conception underlying the word is the primitive one of love-in-hate or brotherhood in warfare. The connotation of βαρβαρος has no meaning unless implying a consciousness of Hellenic unity. This unity rested upon an ethnic basis. Common descent was the assumption that found support in many legends. Herodotus always assumes blood relationship. It is difficult, in the light of modern research, to uphold the claim, but the faith in it was universal, even in the days of Hesiod, who declares the Greeks to be one nation. This tie, indeed, is independent of actual historical proof or truth so long as there is a belief in it, resting upon a common language. This belief did exist and hence, in the beginning, a traditional kinship, and a living national tongue, were two powerful factors working towards the unity of the Greek tribes, and drawing strength from a recognition of and contempt for the barbarian. An account of integrating tendencies, however, is incomplete without an analysis of the strongest of all—a common religion. The Greeks, wherever time and tide had

placed them, worshipped the same gods, and Olympus was everywhere represented as the home of these deities. The diffusion of the common name Hellene can be traced back through an Amphictyony to religious influence, while many manifestations of this powerful agent for unity must call for notice.

Any centre of religious influence, however established, became a nucleus round which national sentiment gathered, since it had a claim upon the reverence of Spartan, Theban and Athenian. The culmination of this tendency towards religious fraternity was in the universal acceptance by the Hellenes of Delphi as the common hearth of Greece. Far-reaching consequences arose therefrom : common religious rites gave birth to a kind of political relation. The temple of Apollo became the centre of a league which originally was centred at Anthela. This league became known as the Amphictyonic league. It was a religious confederation and by no means the only one of its kind, though the most important. Thus "the inhabitants of different cities grouped themselves around the Temple of Poseidon at Onchestus, in the territory of the Boeotian city of Haliartus, round the sanctuary of Athena Itonia in the territory of Cotonea and round the temple of the island of Calauria."[1] Such large States as Argos and Sparta found a place in the Calaurian league. Asia Minor had more than one Amphictyony, while the Athenians' dexterous use of the worship of Apollo at Delos is well known.

Among these early councils, however, the most celebrated was the Amphictyonic League of Delphi. Its origin was humble, being merely the reunion of the petty tribes that dwelt in prehistoric days round the Pass of Thermopylae. The Dorian conquest, however, had far-reaching effects upon the Council, inasmuch as the Lacedaemonians still

[1] Holm. "History of Greece." Vol. 1.

maintained their connection with the League and extended its privileges to the races they conquered. The Ionians, too, began to assume a large place in the Greek world, so that in historical times the Amphictyonic League of Delphi embraced practically the whole body of the Hellenes.

The number of tribes represented on the Council of the League was twelve. Originally each tribe had one vote, the theory of the constitution being the perfect equality of the tribes represented. In course of time the tremendous expansion of two of its members—the Dorians and the Ionians—necessitated a doubling of the votes, the total number of voices thus becoming twenty-four. A word now as to the object of this and the other analogous associations, because misconception has been rife on this point. As might be inferred from their origin, the *raison d'être* of the assemblage was the performance of certain religious rites. "The victim was sacrificed to the god of the League and the representatives of the tribes partook of the flesh. This common repast, followed by hymns and prayer and games, was the outward sign and bond of the association."[1]
But the functions of the League rapidly extended. As Grote remarks, "At first it was purely religious, then religious and political at once, lastly more the latter than the former."[2]

Its organisation was simple, but interesting. Two meetings were convened annually—one in the early part of the year, at Delphi, the other in the autumn, at Anthela. The delegates were known as Hieromnemones and Pylagorae, though the precise relationship between the two classes is unknown. Fortunately the oath of the association has been preserved for us by Aeschines. "We swear," it ran, "never to destroy an Amphictyonic town, never to

[1] Fustel de Coulanges. La Cité Antique. Quoted Dreyfus.

[2] Grote. "History of Greece." II. 253.

cut off any Amphictyonic town from its running water either in war or peace, to march against any power that attempts to do so and to destroy its towns. We swear to use every means in our power, hand, foot and voice, to punish any who plunder the property of the temple or conspire against the god."

Its decisions were enforced, if necessary, and though instances of successful disobedience are extant, yet its decrees seem to have been respected and upheld. Indeed there are four wars known which it waged in its corporate capacity, in the first of which Cirrha was raised to the ground for having offended Apollo.

Our object in thus describing the Delphic Amphictyony is different from that of many early peace writers. They laid stress upon its work as a peace organiser and sometimes read into the accounts of it fanciful conceptions of its powers and aims. Dr. Abbot states the opposite case well. "It was not," he writes, "a national assembly; it neither conducted the policy of Greece, nor had it power to settle disputes between great cities. Nor was the Association national in the sense that it included the whole of Greece."[1] Dr. Evans, however, seems to make an overstatement when he says "There is nothing to indicate that in any sense it corresponded to what is known as a Tribunal of Arbitration or that the principle of Arbitration was applied or even recognised by it,"[2] since Holm distinctly asserts in his History "The Amphictyonies could prescribe arbitration instead of war between weak States, but strong ones always resorted to the arbitrament of war."[3] The only way, in fact, in which the League advanced the cause of peace was by the feeling of unity its meetings fostered; it even forced upon such deadly enemies as the Phocians and Thessalians the recognition of common interests and aspirations.

[1] Quoted Darby Evans. International Tribunals, p. 8.
[2] Ibid., loc. cit. [3] Holm, op. cit.

But let us pass on. The real aim of the analysis has been to lay stress upon the extraordinary pitch to which a community of feeling had attained among a group of sovereign states. Even the other periods of a similar "entente" do not in some respects equal it, viz., the Middle Ages, when the centripetal influence of a single head of religion, strengthened by such huge undertakings as the Crusades, brought about an analogous communion of sentiment; and in the Modern European period, where the enlargement of intellectual boundaries, and a common participation in a distinct civilisation has wrought a similar result. It is precisely, too, in these three periods that we find arbitration existent to any extent—a significant conclusion.

We shall not at this point follow this argument further, but rapidly sketch other manifestations and causes—it is hard to distinguish which—of Hellenic communal feeling. Closely connected with the Amphictyonies were the four Panhellenic Games. They were a great help in maintaining this feeling of fellowship: it will also have to be noted later how closely they were related to arbitration. Bury has an interesting remark to pass on them. "We may suspect that the promotion of this feeling was the deliberate policy of the rulers who raised these Games to Panhellenic dignity. But it must not be overlooked that the festivals were themselves only a manifestation of a tendency towards unity which had begun in the eighth century."[1]

Finally, the Homeric poems supplied that great strengthener of alliance, a common accepted history, while the Oracles served as a public opinion or conscience. There are many instances where 'the god' made use of his great influence. Revon makes the statement, "Dépourvu du

[1] J. Bury, "Short History of Greece."

droit d'initiative il ne pouvait que donner des réponses aux questions qu' on lui posait, conseiller, mais non diriger d'une manière indepéndante la vie politique," which may be in the main correct, but to which an exception is furnished by the important case of the appointment of Démonax as an arbiter of international differences. But Revon misrepresents this instance so much[1] that it is little wonder he fails to note how contradictory it is to his proposition. Indeed, the Delphic oracle wielded an immense influence, and, despite many slips from the path of rectitude, in the main, upheld a reputation for incorruptibility and righteousness.

We must mention in a word how it was that Greece never became a nation when all seemed favourable to a consolidation of the units. The first reason undoubtedly was the peculiar form of political organisation that the Hellenes developed, this form itself resting upon physical conditions of the country and psychological peculiarities of the people. But however it arose, it remained a strong source of disunion and generated a spirit of love for itself that prevented all means of consolidation—force, federalism, etc.—being successfully used. Force, as our analysis of war showed, was bent upon the extension of the boundaries within which peace should be assured. Consequently there were many attempts at domination, any one of which would, if successful, have made of the Greeks one nation, and the Hellenic period as barren of arbitral instances as was the period of the Oriental Empires. Why so? Could we not have had arbitration between the Greeks as a whole and their neighbours, *e.g.*, the Persians? No! as history reads this would have been an impossible consummation. Indeed, there is no recorded instance of an arbitration between any Greek and Barbarian states.

The reasons are given by Revon and the others as having

[1] See page 38.

been narrowness and selfishness. The Greeks, before they could reach the sublime heights of modern civilisation, must have had Christianity. They had no feeling of "humanity," no consciousness of a duty to man as man. But this is not just, and it is the neglect to perceive the real reason that makes much of the work of Revon and the others inconsistent with history and many of their conclusions false and improbable. The Greeks were a race, not merely a nation. They had a civilisation, a religion, a social organisation that were in many respects as distinct from those of the other peoples on their borders as is our Western civilisation from that of the Arabs or the Siamese or the Chinese. Now wherefore, then, this aspersion upon the Greek as being imbued with a low ideal, never rising to a height wherefrom he could embrace humanity as a whole. Revon puts it, all too neatly: "Le patriotisme, étant un sentiment religieux, devait fatalement commander la lutte contre ces infidèles, les barbares. Les limites de la terre hellène n'étaient qu'un prolongement visible d'invisibles frontières célestes. Les penseurs grecs invoquaient la paix mais seulement pour la race élue, et les autres peuples leur apparaissaient comme une misérable proie de guerre, parce qu'ils n'adoraient point les mêmes dieux."[1] The emptiness of this argument is apparent when it is applied as a criticism of the relations of modern nations to native races. We have arbitral courts in Europe for the chosen race, but never think of extending the privilege to the Hottentot or the Kaffir because "ils n'adoraient point le même Dieu." So far as the last reason will stand in serious argument for the motives which at present inspire the treatment of native races by the nations of Europe, to-day, so far will it explain the attitude of the Greek to the barbarian.

[1] Revon, op. cit.

That relation was what it was because it could not conceivably be any other. There was no more, for the Hellene and his neighbour, that common footing, which is the first necessity of pacific understanding, than there is for the English people and the Dervishes. The common explanation of the unflinching attitude of the Greeks towards the barbarians cannot stand, for, though the former were by no means perfect, a widespread feeling at once selfish and murderous never existed among them, as our authorities would have us believe.

It is a similar blindness that prompts Merignhac to such a paragraph as the following : "The Greeks often resorted to arbitration, but they practised it among themselves and not with foreign nations, for, like other ancient peoples, they regarded foreigners as barbarians and treated them as enemies." He does not ask, why? "Besides," he continues, "their arbitrations did not cover great political questions, for every Greek city preserved its independence with a jealous care. They related to disputes touching religion, commerce, boundaries and the possession of contested territories, especially of the numerous islands scattered among the Grecian seas."[1] One asks, with astonishment, can the last century show questions of greater political moment peacefully settled by arbitration? Valmigère can answer for us. "Le XIX^me^ siècle ne nous offre pas d'exemples d'arbitrages bien frappants. A notre époque ils sont encore sans grande importance. Ils n'ont guère reglé que des questions d'indemnité ou de délimitation de frontières coloniales. Aucun n'a empêché une grande guerre sur le point d'éclater, (the Alabama decision is often claimed to have done this, but it is doubtful) aucun n'a terminé une guerre déja engagée."[2] A glance at Dr. Evans' "Modern Pacific

[1] Merignhac trans. in Proceedings of Washington Arbitration Congress.
[2] "De L' Arbitrage International," p. 65.

Settlements" will show that it is just the sort of questions that Merignhac cites as solved by arbitration in Greece that form the great body of arbitral decisions in modern times.

The path is now cleared, and it is with relief that we turn to Case in the "Arbiter in Council" to start us on our analysis of arbitration in Greece. The special value of Case's discussion is that he investigates the origin of the idea of arbitration—not international but *domestic*. Now when the necessity arose, or desire became felt for pacific machinery, man's conservative nature made him turn to that organisation which, with least modification, would apply to the new conditions, just as such an organisation as the Gild was modified to suit changing conditions.

At Athens, then, from the speeches of Demosthenes and the Attic orators, we find evidence for a widespread use of arbitration. "The functions of an arbitrator as conceived by the Greeks were distinguished from those of a judge in various ways, but principally in this, that whereas the judge was required to interpret the law strictly, an arbitrator might decide individual cases on their merits."[1] The judge was appointed by law, but the arbitrator was selected by agreement between the parties. Aristotle clearly defines an arbitrator, *e.g.*, *διατητὴς δὲ ὁ κατὰ συμφωνίαν αἱρεθεις συμβιβάσεως χάριν*. Arbitration had still another advantage. From an arbitral award there was no appeal. "The submission was generally a written agreement to which was annexed an engagement by third parties to be sureties for performance."[2] This system undoubtedly was the one carried over from civil to international arbitrations, and with but little modification. We find that the procedure in international instances was worked out much as follows: The agreement (*σύμβολον*) designated the arbitrator and the

[1] Case: "Arbiter in Council," p. 357.

[2] Case: loc. cit.

subject of the litigation. The arbitrator or the tribunal, if one was established, named the time and place of the award; and the parties selected advocates *σύνδικοι*. For instance in one case—Delos versus Athens—Eiphinates of Olympus represented the Delians and Aeschines the Athenians. The arbitrator, after hearing the debate, made his award. The sentence drawn up in duplicate was usually deposited in the temples. Both sides bound themselves by oaths to execute it. The question of competence we have touched on, but Revon has an epigrammatic summation of it which is false history. "Ainsi compétence modeste à l'intérieur, compétence nulle à l'exterieur; tel est le caractère general de l'arbitrage chez les Grecs. Le nombre des arrêts est grand: leur importance, fort mediocre"—compared, of course, with modern instances. The truth of the matter will be apparent from our review of some of the instances.

Lastly, a simple paraphrase of the great founder of modern International law will serve to show the estimation in which the Greeks held arbitration. Thucydides attests the Hellenic respect for arbitration, who, in his history of the Peloponnesian war (lib. i., 95), puts into the mouth of Archidamus, King of Sparta, the following words: "*ἐπὶ τὸν δίκας διδόντα οὐ νόμιμον ὡς ἐς ἀδικοῦντα ἰέναι.*"[1] Besides, all those chapters where he describes the celebrated diet assembled in Lacedaemon before the commencement of the Peloponnesian War, present an eloquent advocacy of the superiority of arbitration to an appeal to arms. Isocrates, too, in his oration against Ctesiphon, praises Philip of Macedon because of his readiness to submit his differences with Athens *πόλει τινὶ ἴσῃ καὶ ὁμοίᾳ.*"[2] Conscious pacific aspiration was in the air at

[1] Grotius. Liber II., c. xxiii, § viii, 1. Quoted Darby Evans, p. 123. "It is wicked to proceed against him as a wrongdoer, who is ready to refer the question to an arbitrator."

[2] "To any impartial city." Grotius: Lib. II., Cap. xxiii, § viii 1. He makes a mistake about Isocrates which was corrected by Barbeyrac.

many periods of Greek development. Plato's Critias dreams of an ideal federation of kings at the Isles of Atlantides by means of which all differences should be solved without recourse to war. This is the first mention we have of a scheme for a permanent peace resting on a federative basis. Phalencus wished to federate the whole of Ionia,[1] and Aratus' great achievements by his extension of this form of political organisation are well known from Polybius. Crates the Cynic dreamed of a city where war never penetrated with its rude alarms, and it is *a propos* of his work that Laurent remarks, "Les désirs de l'humanité, exprimés par les philosophes et les poètes sont une prophétie de son avenir."[2] Aristophanes in the Birds includes a skit on peace projects in Greece at the time, which finishes with a supplication of the chorus to the gods to "abolish the use of the murderous steel." Pericles himself, according to Aristides, wished "ut bellum vitaretur, *δίκῃ διαλύεσθαι περὶ τῶν διαφόρων.*"[3] All of which leads us to conclude that the commonplaces of Peace Societies were not altogether without parallel amongst the Greeks.

III.

International Arbitrations among the Greeks.

Five Spartans in the time of Solon represented the Spartan State, which was called upon to settle a dispute between Athens and Megara over the possession of the Island of Salamis.[4] In the year 416 B.C., Argive judges acted as arbitrators on a question of disputed ownership between the Cimolians and the Melians.[5] The Etolians

[1] Laurent, "Etudes sur l'histoire de l'humanité." II. 373.

[2] "The expression by its philosophers and poets of the desires of humanity is a prophecy of its future." Ibid.

[3] Grotius loc. cit. "in order to avoid war, to accept arbitrators."

[4] Laurent, op. cit. II. 138.

[5] Merignhac, op. cit.

rendered an arbitral sentence on a question of boundary between the cities of Melite and Pera in Thessaly. The Athenians and the Mitylenians fell out over the possession of the promontory of Sigeum. Periander, as arbitrator, awarded in favour of the Athenians.

About the year 550 the cities of Cyrene were at war. "The god," as Herodotus relates, ordered them to stop the war by a recourse to arbitration. He counselled them to select for arbitrator a man of Mantinea, a city which at this time had the reputation of being wisely governed and possessing many wise and just citizens. The Mantineans, when called upon, chose Demonax because of his great sagacity. Demonax gave an award which was accepted by the warring cities, and peace reigned once more.[1] That is all that is known of the incident by anyone, yet Revon, speaking of "the god," has "en maintes rencontres il devint le valet des forts : souvent il flatta les puissants et les violents . . . il éluda bien des fois les questions qui l'embarrassaient : c'est ainsi que, dans le débat qui eut lieu, vers 550 avant J. C. entre les rois des Cyrenéens, il se borna à déclarer qu'on trouverait un arbitre à Mantinée. Telle fut l'action toujours diverse et souvent douteuse de ce fameux oracle de Delphes."[2] Such criticism, when the oracle devolved from itself the duty of deciding upon the dispute and when great satisfaction was felt on both sides at the award of Démonax, is wholly false and misleading.

One of the principal instances of international arbitration occurrred in the year 470 B.C. There was a dispute between the Corinthians and Corcyra about the possession of Leucas. As will be remembered, Themistocles was now the first man in Greece, and one whose ambition was to demolish the small units of Greece and build up a nation

[1] Herodotus, iv., ch. 161.

[2] Revon, p. 85.

from their ruins. He was called upon to solve this vexed question, and he "ἐλυσε τ' ἐχθραν εἰκοσι τάλάντα κρίνας τοὺς Κορινθιους καταλαβεῖν καὶ λευκάδα κοινῇ νέμειν, ἀμφοτερον ἄποικον. It would be difficult to exaggerate the importance of this award. Valmigère alone does it justice. He says, "Ici nous avons une affaire coloniale et de plus, une condamnation pecuniaire comme dans l'arbitrage de Genève après l'affaire de l'Alabama."[1] There are pages full of glowing commendation of the Geneva award, but very little recognition of the decision of Themistocles. It would not have suited some theories very well and is therefore ignored.

During the reign of Antigonus, the inhabitants of Lebedos, having been forced to leave their country, settled in Teos. Some difficulties which arose between the new and old inhabitants of that city were smoothed by the city of Mitylene appointed as arbitrator by the King, Antigonus.

Merignhac[2] points out the arbitration of the Sicyonians when a sudden dispute arose between the Athenians and their northerly neighbours the Oropians. The spring of the difficulty was this. The city of Oropus, between Bœotia and Attica, was the subject of a quarrel between these two states, viz., Athens and Bœotia. Philip, after the struggle of Chaeronea, awarded Oropus to the Athenians. Pausanias tells us that the latter, driven by necessity, pillaged the city they should have protected. The Oropians appealed to the Roman Senate, who delegated the Sicyonians as arbitrators, and they condemned the Athenians to pay five hundred talents as a penalty.

Calvo has other instances,[3] but those cited will indicate the familiarity of the idea of arbitration and the frequent recourse to it. We have seen that the Oracle at Delphi

[1] Valmigère op. cit. p. 62 and 63.

[2] Traité Theorique . . . quoted Washington Peace Conference Report.

[3] Le droit International, II. 546.

often acted as arbitrator, and M. Laurent[2] points out that the victors in the national games were frequently nominated to perform that duty. Pontarcus, a noted wrestler, was intermediary between the Eleans and the Achaeans. Pittalus, an Olympic victor, filled the same rôle between the Arcadians and the Eleans. Poets, too, sometimes were selected, since we hear of Simonides preventing an imminent outbreak between Hiero of Syracuse and Theron of Agrigentum—two monarchs of great power and possessions.

It seems strange that the "arbitral clause," which the Peace Societies of to-day regard as their most potent and practicable instrument for assuring a pacific era, was recognised in treaties between Greek states. These "clauses compromissoires" in diplomatic language, found their way into agreements between the Lacedaemonians and the Athenians, and between Lacedaemon and Argos. In the latter treaty the clause provides that, if a contention should arise between the two allied cities, they should select an impartial city as arbitrator.

Pericles' treaty of peace in 444 B.C. has a similar stipulation, while Crete furnishes us with a splendid example: "There was an agreement between the cities of Hyerapytna and Priansus," which stipulated that "in regard to the injuries already done on either side, Enipan and Neon, the 'cosmes' or chief magistrates of Crete, should settle the disputes arising from these causes, before a Tribunal selected from each city. In regard to any future injuries they should commit, they should employ lawyers prescribed in the order of the public edict." The "cosmes" should also indicate the city from which both parties should appoint the arbitrators.

[2] Laurent, op. cit. II. 302 *et sequentia.*

IV.

Attempt towards a definition of Arbitration.

We are now almost in a position to decide upon a definition of arbitration—not such a formal definition as "Arbitration is the passage from the state of war to the state of law," because that would be useless to us, but a real definition, conformable to our analysis so far.

International arbitration is a relation of some kind or other between two social groups. Now, as is remarked by Professor Ritchie, it is only the ideal polity that is isolated, and for weal or woe the conduct of any social group must be modified to a greater or less extent by the contiguity of a neighbour or of several.[1] When a social aggregation becomes settled and defined, it perhaps makes war upon a neighbouring association, and therein is the beginning of a series of relations which develope in all historical times along a definite line. It, like the waves, advances but slowly, but still does advance. This sequence of international relations is accelerated or retarded by many circumstances, such as community of blood or a common religion upon the one hand, or varying political aims and race-hostility upon the other. This progress is from a state of complete independence and self-sufficiency—*i.e.*, the state of absolute non-relationship—either through war, commerce, co-operative enterprises, common ideals and aims —to federation, or—through war alone—to absorption or subjection. Now in the state of non-relationship there can be no arbitration, because no contentions can arise as subjects for an award. In a state of absorption or federation, if complete, the distinctive character of the two peoples is lost, and, they being governed from one sovereign body, there is no more room for international arbitration

[1] Prof. D. G. Ritchie. Social & Political Studies, p. 134.

than there is in the Bundestat of Germany or the United States of America. Hence we must look for arbitration in those international relations that range between total independence and complete union. The question is, where? since an infinite variety of social and political combinations can be found between this alpha and omega. It is our object to determine, as far as possible, the position of arbitration in this long series of political relationships. We have seen that war, evolving towards the consummation of its own death—security—passes through the stage of conquest pure and simple. The study of history, too, provides us with the further truth, viz., that should nature give any group of people a relative advantage in the struggle for existence, they embark on an era of conquest because the exploitation that follows victory will compensate them for all the sacrifices and hardships of the enterprise. Rome, of course, is the example of such a nation. Our problem in such a case becomes easy, because owing to the cutting short of international relations by the sword arbitration never emerges. Absorption solves international difficulties once and for all, and the problem of their peaceful solution never begs an answer. Hence, then, the presence, amongst a group of states, of one with a preponderating advantage, resolves our difficulty at once, unless the encroachments of the Leviathan can be met by united action amongst the lesser communities. Persia, though outside the Greek world, found this tendency to union in the face of imminent danger too strong for her. Such a case as this goes to prove Sidgwick's opinion that federation has been chiefly brought about by the threat of external aggression. In Greece, as we noticed, the centrifugal tendency of the city state prevented a permanent unity being achieved even in the height of the danger from the East.

In Greece, then, the development was modified thus. A state which grew sufficiently strong to attempt a career of conquest was always checkmated by the united forces of its neighbours. Sparta—and before her perhaps Argos,—Athens, Thebes, all had to own themselves beaten before a united front. Thus we see how, in the case where a group of states—the present European nations are an excellent example—are in equilibrium, the method of conquest and absorption that Rome employed with such magnificent success must be set aside. The end, viz., the unification, more or less complete, of the various nations concerned, must be attained by another means, more complex, and who shall say more satisfactory? This second method is the one we have described at length in this long chapter.

The affinity which exists between contiguous states must be developed : we have seen how strong this affinity was among the Greeks—so strong that it sometimes conquered the powerful separatist tendencies of the πολις and in the end was about to result in the federation of Greece. Rome swamped this promising attempt to achieve peaceful union but sufficient was actually attained to serve as an earnest of the ultimate outcome. An inherent obstacle in the way of this mode of attaining to the state of inter-dependence is that the other method, viz., conquest, is liable to assert itself from time to time and to set back the evolution many generations. In modern Europe, as well as in ancient Greece, we can see this disturbing element at monstrous play. Spain trod the path, Austria and France followed, and Germany found to her cost that now "il est presque plus avantageux d'être vaincu que victorieux."

For our purpose it is sufficient to note the lesson that the course of Greek history, confirmed by rapid analogy with modern Europe, has to tell. It is plain to be read. Arbitration does not flourish in a state of absolute non-relation-

ship. Neither do we find it where complete federation or absolute absorption has taken place. But at some point between these stages it becomes evident. At what point? Certainly not while any one nation, confident in its strength, carries it with a high hand and by threats or war can make its own will the only measure of the justice or injustice of her actions. Such a condition would make the growth of an empire only a question of time. But this imperialism may be checked by united resistance and the result of this Greece specially illustrates. Despite irruptions of the tendency to conquest or domination—Athens and Sparta, Austria and France will point the moral—ties of affinity must find development. At a time when these are strong and the imperialism is weak we get a widespread "entente," the natural evolution of which is towards a federation, *e.g.*, Aratus and the Achaean League. When this end is within sight, *i.e.*, when the centrifugal tendencies are worsted by those towards union, then and then only do we find arbitration. Modern Europe will, when we come to consider it, illustrate the soundness of our conclusion to the full. The set back which the Napoleonic era gave to the federative tendency we have not recovered from, any more than Greece completely got rid of the millstone of disturbance and disintegration that the long duel between Sparta and Athens fastened round her neck. Eventually she did, only to have the whole house of cards reduced to a heap by the swords of Roman legionaries. Will Europe succeed in bringing about complete political understanding or will another Rome or another Reformation drive us forth again into the wilderness? It would be hard to say.

Before leaving our study of Greek arbitrations there is an important point to notice. There is no sign of what the older school of modern jurists were fond of predicating as

an absolute necessity to the existence of arbitration, viz., the idea that the case referred must be capable of being stated juridically, *i.e.*, as a question dependant for its answer upon the interpretation of a point of law. Case, in the "Arbiter," who is invaluable upon such points, states that "Arbitral procedure grew up side by side with legal procedure . . . now the most marked characteristic of early arbitration was its elasticity, perhaps I might say the absence of procedure and of definition."[1] Again, "Thus arbitration from the first was a discretionary, as distinct from a strictly legal judgment, and, pray, note that it began with the very class of disputes for the solution of which international arbitration in its early stages has been most commonly and fruitfully employed—I mean boundary disputes."[2]

This is noticeable with regard to Greek arbitral development. Though not quite amorphous it was exceedingly elastic, in that, for one reason, it would have been exceedingly difficult to adopt a judicial mode of procedure where there was no body of rules, which, by virtue of precedent or common agreement, could be termed international law.

Revon always has a deliciously simple answer for such problems. We may conclude this long analysis of the phenomenon of arbitration among the Hellenes by this solution of his, which, if nothing else, is picturesque and magniloquent: "L'idée religieuse hantait l'arbitrage. Ce ne fut pas une conception d'hommes de droit. De là un caractère important: l'absense de tout principe juridique. Là bas, devant la charité le droit s'éffface. D'où il resulte que la notion juridique de l'arbitrage devait rester tout à fait étrangère à une telle civilisation."[3] And in many respects a consummation devoutly to be wished.

[1] "Arbiter in Council." Macmillan & Co., 1906. Chapter on Arbitration.
[2] Ibid. [3] Revon, op. cit. p. 69 *seq.*

CHAPTER III.

Imperialism and Rome.

I.

First, note that, in the words of J. M. Robertson, Empire is one thing and Imperial*ism* is another. "The latter term," he continues, "may with special fitness stand for the ideal which not merely accepts empire and makes the best of it, but holds the pursuit of empire to be either at all times, or specially at the present time, a course scientifically advisable in the interest of free and rationally governed nations."[1] The imperialism we are going to analyse and illustrate specially from Rome only touches at some few points the problem Robertson embodies in his definition. The phrase "free and rationally governed nations," in the light of sound political thought, based upon the development of free institutions of modern European nations, will rule out Rome.

This is desirable. Our author rejects the distinction between a true and a false imperialism, and though such loose terminology is useless for scientific purposes, yet, in my humble opinion, this differentiation encloses a nucleus of truth. The false imperialism we shall attempt to define and illustrate from Rome. The true imperialism we shall reserve for such an empire as that of Britain, which, in an analysis of the great problem of the control of the tropics, we may have to put to the test of moral righteousness. What it is intended to make clear, indeed, is that although British imperialism will have to be tested, yet the testing

[1] J. M. Robertson. Imperialism in "Patriotism and Empire," p. 145.

cannot be a loose transference of arguments from such empires as flourished in the ancient world, in that, as we have shown from a definition of imperialism by a hater of empire building, the conditions are not identical. Rome was no free nation acting by will of a majority, and consequently her empire is not analogous to ours. We undoubtedly have in the modern world, however, analogies to the Roman domain, and any condemnation of her methods and the motives of them will apply equally to those of Spain and also to some early attempts of our own country. The horror of Congo administration to-day and the whole organisation of rubber-exploitation there, cannot be paralleled in any period. Hence a study of Roman imperialism may embody a lesson for modern Europe and may cast light upon some of her difficulties.

First of all it was a native growth—in that respect analogous to our own, as distinct from that of Germany which is imitative and not spontaneous. Thus it is unnecessary to connect it as offspring of the other early empires. These are summed up with brilliant brevity by Robertson : " After the rule of Athens," he writes, " the rule of Sparta : after that, again, a limited Athenian rule, got by triumph over the Olynthian confederacy : then the Macedonian rule, based on the military experience of Thebes : then, on Alexander's death, the new swarm of Hellenistic empires : then the advent of Rome."[1]

Such a widespread form of political development must have had roots deep down in the nature of things and the nature of man. It was so. Let us recall our first chapter on war. Our first stage was that described by Goblet D'Alviella.[2] " Flocks and agriculture emerge; then nothing impelled man necessarily to agression and pillage;

[1] "Patriotism and Empire." J. M. Robertson.

[2] Désarmer au déchoir. Initio.

nothing prevented him from making peace blossom on the earth, self-help taking the place of self-destruction''—nothing unless the command of an inexorable law of progress. Through aggression and pillage we saw running, like a red thread, the desire for security. Peace, however, cannot establish itself. Hence the evolution of a government to maintain it. A ruling class, however, must be paid, and the payment, as we saw, was allocated to a conquering race from the profits of the exploitation of a conquered one. Sparta we took as an example: we found even there how the best interests of the ruling class led them to modify to some extent the harshness and severity of a ruthless oppression; how the necessity of securing themselves against dispossession, either from the outside or from beneath, made the evolution of an artificial military organisation possible. In our last chapter we noted further that the possession of a strong army inevitably led to attempts to expand, which in the conditions of the time inevitably failed.

Rome succeeded, and we must see how. Historians all are agreed that the nucleus of the mass of myth and fairy tale that formed a national history for the Romans is a recognition of a social organisation sharply severed into two portions—a patrician minority and a plebian majority. In our terminology there was a ruling exploiting class and a proletariat.

It is interesting to note that one phenomenon we noted in Spartan rule, viz., the modification of a ruthless exploitation, is, from the point of view of the people, a beginning of its emancipation. This new train of development began early in Rome. The ruling class was not able to withstand with the same success as the Spartiatai this internal upheaval. At one time everything seemed lost to the patricians, but by shifting their positions,

by casting, like the huntsman his glove to the bear, the vote to the people, and transforming their military organisation into a bureaucracy, they riveted the fetters still more tightly round the necks of the proletariat. Herein lies for us the problem; because the transformation is only possible by extending the political domain. No large body of men could find the means of luxurious life from the normal profits of a city state unless there were a harsh system of exploitation. This being now impossible, the whole interests of the ruling class are in the direction of empire. The government of Rome began this course early and therein lay the secret of their success. While as yet strong in power, they secured the means of greater power and the subsequent process, to borrow economic terminology, was, up to a certain point, an increasing return—each extension making possible a further one.

Now, in the first beginnings, the profits are small and only supplementary to the exploitation of their own lower class. Hence the inevitableness of the condition so feelingly described by Robertson, who ascribed it to "the play of an egoism which shrinks from no extremes of tyranny within the society itself, and a vigour of patriotism which shirks no effort for the maintenance of the state against others."[1] "We see the poor farmer going loyally to war," he says, "along with or under his richer neighbour, helping him to defeat the traditional enemy and returning to be cast in bondage for the debt he has been forced to incur after a previous campaign—forced, that is by reason of the fact that his farming went to ruin in his absence, while the rich man's farm was tilled by his slaves and his bailiffs."[2] Such pictures and the broader canvas of Greenidge's

[1] Patriotism and Empire, p. 8.

[2] Op. cit. p. 9.

Chapter on the economic condition of Italy[1] are explained, we hold, better by the nature of the exploitation forced upon the ruling class than by Robertson's own reason—a savage egoism. Not but that that may be the psychological basis of imperialism of the Roman and Spanish type; only it is not distinctive of imperialism, having many more monstrous manifestations, such as the horrors of early factory development. Indeed the only scientific explanation of the subsequent pampering of the city mob is that, the profits of empire growing, the poor return that oppressive and repressive treatment of the Roman proletariat would have rendered, made the bureaucracy not only unwilling to use such measures, but even ready, for the sake of peace, to sacrifice a moiety of imperial revenue to provide "panem et circenses."

The danger from below was, in this way, deprived of its deadliness. The vote remained to the city tribes, but the shameless use of electoral corruption, strengthened by the tenacious conservatism of the plebian, made secure in this direction the ruling caste, which hardened out during the long struggle for political recognition. The people hewed through one barrier to be confronted by another so strong that it was not till 1789 A.D. that the onslaughts of centuries made it totter. It is unnecessary here to trace the course of Roman empire-building or to point out that the danger which the bureaucracy could not turn was the "ambitieux" with an army at his back. The tale is well known. We have to ask, however, what justification, if any, there is for this huge Roman domain, which at every point was the negation of justice and was reached through seas of blood.

[1] Greenidge History of Rome. Ch. 1. vol. I. This first volume makes us conscious of the irretrievable loss to scholarship by G.'s death.

The only plea that can be urged is that, in the light of all that followed, the Roman empire was necessary. That it fell does not preclude its justification. War was still in its "grandeur," and the Pax Romana was the first fruit of great value. The final consummation of war—perfect security for the efforts of man towards moral regeneration—determines its course. Alike for the hapless helot of Sparta and the ruined yeoman of Rome, as for the Red Indian and the Maori, there can be no rational sanction for the capricious sacrifice of their lives and happiness on behalf of future generations. This broad view, which is Benjamin Kidd's,[1] is a noble one. Unless we are to idly beat the air we must face the grim reality that the unknown goal to which our civilisation moves is the determining force of its progress and that inevitably material comfort cannot accompany it for all, but only for a few. Whether the altruistic feeling of the present may modify the conditions of the future is hard to say, but still the fact remains that the Roman Empire was necessary—else had Europe been eaten piecemeal by the barbarians—and that the suffering entailed was likewise necessary if the plan of the Ruling Power was to be carried out.

A vehement protest must, however, be made against the extension of this theory of progress to a justification of, say, Leopold's shame in Africa. Each generation must work towards a higher and higher moral plane, and that which is condemned by such higher ethics must be fought tooth and nail. But, to return.

Under the aegis of the Pax Romana the world had an opportunity of viewing for the first time on a large scale that motive force to progress which armed conquest in part

[1] Benjamin Kidd: "Control of the Tropics," "Social Evolution," "Western Civilisation," and Carpenter's "Disease of Civilisation" and Chapter on "Exfoliation."

made possible, but which in the end is to usurp many of the functions of war, viz., industrial competition. It did not, however, owing to the peculiar conditions of the time, assume the importance it does in the modern world. There was merely a glimpse of it and its influence upon the question of peace and war was exceedingly slight. Unfortunately this world-wide peace came at a time of decadence, brought on by the ruthlessness of Roman provincial official rapacity. The living bulwarks against the savage hordes without weakened, and history recounts the ruin. The whole solution of the problem was again to seek. Our sad summation of the whole must re-echo that of the author of "Patriotism and Empire." "Persistent empire," he says, "in the end infallibly brings the imperator, be the progress slow or speedy: and with the imperator comes in due time the decadence of empire, the humiliation and paralysis of the spirit that had aspired to humiliate its kind."[1] Then, man, cast back again into the pit, must build yet another ladder to climb from the slough, and well be it for him if he uses not the same worm-eaten staves that aforetime collapsed under him.

II.

What, then, of arbitration? Should our conclusions arrived at in the last chapter be true, then they should fit, without much modification, our study of the Roman people. To recall that analysis, we predicated two distinct methods of attaining one end. To give exactness to our argument, we assumed a state of perfect non-relationship, *i.e.*, a footing of absolute independence, *e.g.*, England and China a thousand years ago. We then argued from the tendencies everywhere found throughout history, a movement towards, in the ultimate end, a position of subordination to a large

[1] J. M. Robertson, op. cit.

whole, whether that be a federation in either of its two forms, a Bundestat, or a Statenbund, or as part of an empire. This progress, determined by the ultimate form of organisation reached, falls into two classes. The one species Greece has illustrated for us—and the conditions of it were laid down. This was that none of the states concerned should become too powerful to be able to meet and overcome any individual state out of the rest, or any combination of them possible in the state of political feeling of the period. Then—though the illusion of superiority may tempt from time to time any of them to aggrandise—the development of common ties paves the way for federation. Just before this latter stage is reached, arbitration appears. The other species we also indicated. Conquest attains the end and in empire the individual units are lost. This progress by means of encroachment and aggrandisement of any one State may supplant the other at any period, should one of these irruptions we mention be successful, or even may, as in the case of Athenian Empire, supersede the other for a more or less brief period.

The cutting of the knot by the sword, therefore, obviates the necessity of recourse to arbitral methods. It is simple, it is efficient, but it entails much injustice, and hence, except in very favourable circumstances, is not permanent. This instability, however, note, has reference to internal causes and is over and above any danger which may threaten its existence from without. Federation we shall have to analyse later, but may now predicate its internal stability if constituted upon a wise and equitable basis.

The Roman period is consequently just that period wherein we should least expect to find arbitral methods in common use for the solution of international difficulties. National arbitration, in common with its appearance among all Aryan races, does emerge in Italy. "In the Twelve

Tables three arbiters were appointed to settle the disputes about landmarks and the boundaries of property. Generally speaking the more definite a cause was in Cicero's time the more suitable it was felt to be for compromise and adjustment by arbiters. Upon the whole, then, we may say that, "the Roman idea of arbitration, though indigenous, was developed with an eye upon the Athenian system."[1] The object of this quotation is to show that, had the necessity or rather the wish for peaceable machinery been felt, there was at hand, equally as in Greece, an indigenous growth which slight modification would have made an efficient instrument. It was never needed.

Merignhac makes the bold statement that the Romans never consented to submit their interests to arbitration. Dreyfus' treatment is so slight that his opinion never makes an appearance. Revon, always full even when others are drained dry, holds up—in one case by deliberate suppression of evidence—the Roman Senate as a monster of duplicity and deceit. It is well here to correct what may be inferred from our treatment of Roman imperialism, viz., that a conscious desire to exploit was always present among the bureaucracy. Many of them were Stoics, and it is of the Roman Stoic we read Marshall's fine estimate. "Though active in well-doing, he was proud of being superior to the troubles of the world: he took his share in the turmoil of life because it was his duty to do so, but he never reconciled himself to it: his life remained sad and stern, oppressed by the consciousness of its own failures."[2] History, too, proves that in a measure—like our own Empire on us—it was forced upon them. The black sheep were numerous, but the force of circumstance it was that mostly determined the attitude of the Senate as a whole. With this caution

[1] "Arbiter in Council." Macmillan & Co., 1906, loc. cit.

[2] "Principles of Economics." Initio.

let us investigate an instance of arbitration at Rome which has been a commonplace since Grotius wrote the passage beginning "Sic Arcinienses et Ardeates . . . ." Our authority for the instance is one passage in Livy (Bk. III., Ch. 71) and one in Dion. Hal. (XI., 51 and 52). From them we learn that the Arcinienses and the Ardeates had certain border lands, the title to which was undefined. Numerous wars resulted over these marches without definite result. The Roman people, by mutual agreement, was chosen as Arbiter. The case was heard first by the Senate who adjudged the lands to the Ardeates. The tribes were assembled to give their sanction to the award but were persuaded by demagogues that the lands belonged to themselves. The tribes were convinced and voted accordingly. The Senate was disgusted. Through the Consuls the tribes were recalled thrice, but the vote still stood for annexation. The Senate was powerless before the Sovereign body and asked the Ardeates to wait for a favourable moment. They did so and the lands were soon handed over to them in accordance with the award. The restoration took place in the year 445 B.C.

Merignhac, Dreyfus, Kamarovsky, and Revon all stop at the vote of the people. There is no mention of the conscientious act of the bureaucratic Senate. Barbeyrac so wrote down the account and it was accepted without question by them all. Revon adds insult to injury. After a vilification of the Senate in which he says that what the sword of the legions could not rob from its rightful owners the duplicity of the Senate did. "Veut-on des exemples," he exclaims, "c'est l'arbitrage prononcé en 445 avant J.C. entre les Arciniences et les Ardeates pour une question de frontières : ces deux peuples avaient eu la naïveté de choisir le peuple Romain pour trançer leur différend. Il s'annexa le territoire en litige."[1] Is this a true record of the facts?

[1] Revon, op. cit.

Is it becoming in an advocate of arbitration to mutilate his case by such suppression of favourable evidence?

A genuine case of such jugglery did occur in the year 180 B.C. Rome, however, was then master in her own house and to a certain extent had justification for disposing, as she liked, with the furniture—to use a homely metaphor. On this occasion Nola and Neapolis were the parties, and the action of Rome consisted in taking the land. Cicero does protest, and that again is an argument against widespread scheming and duplicity as is imputed to the Senate. "Hoc decipere est,"[1] is his judgment.

This is all our harvest, and these two sheaves are not true corn. They fall outside Rome in reality, as in neither was that city a party to the dispute. She decided and would in all probability have sanctioned her award with a legion. Indeed, she stood in such relation to the parties that her approval to any course was necessary—certainly in the latter instance—and the simplest method of obviating any grievance upon the part of the Roman Senate was to hand over to her the disposal of the territory under dispute. The possibility of that body annexing the land was probably not unlooked for, while her action, whatever it might be, would have the advantage of settling once and for all a vexed question. Hence it would not be well to shriek in unmeasured terms against the cynicism of Rome, but accept Cicero's laconic description of such procedure as sharp-practice.

We have an account of a curious intervention upon the part of the Rhodians in the struggle between Rome and Pyrrhus. Even now such offers of mediation have to be very circumspectly put to secure hearing. The Romans rejected, as our authorities tell us, "with sovereign contempt the proposed good offices."

[1] De Officiis.

We have only to remember some modern instances of the refusal to accept the "bons offices" of a neutral and to consider the fitness of Rhodes, either in point of dignity or disinterestedness, to reach the conclusion that Rome was right to accept no intervention in the quarrel. Pyrrhus, too, deserved but little consideration. His attack upon Rome was of such a nature that that much abused term "national honour" demanded his humiliation. Society is, indeed, the gainer when such erratic adventurers are made to feel the weight of a power that wars not lightly, but only when the maintenance of security demands war of her.

III.

Rome is not altogether a blank page for the student of international law. The Greeks being a group of kindred States did develope, as we saw, a form of international relationship, but it rested upon other foundations than rules extracted from treaties. What the basis was we analysed at length. Rhodes evolved, in the stress of a huge maritime trade, a code which was known as the Law of the Rhodians. Its offspring in the Middle Ages, the "Consolato del Mare," became both important and famous.

Rome, from her peculiar position during the Republic, could not be expected to evolve a code of International Law. Such in its essence is a recognition and conciliation of the rights and obligations of all the sovereign States embraced in its sphere. The conditions of Roman imperial expansion made the evolution of such a code impossible. Grotius, however, has left us a legacy, viz., that of examining his estimate of the "Feciales," which, indeed, is quite brief. "Fecalium Romanorum hoc praecipium officium fuisse ait Plutarchus *οὐκ ἐᾶν στρατεύειν πρότερον ἢ πᾶσαν ἐλπίδα δίκης ἀποκοπῆναι.*"[1] Did Rome, indeed, have an

[1] Grotius, op. cit., loc cit. "Plutarch says the chief duty of the Feciales was to forbid war unless all hope of a judicial settlement was cut off."

official bureau which would have, if transferred across the centuries and the Atlantic, condemned the Hispano-American war? It did not. The Feciales were a body of men whose duty it was to maintain the forms of international relationship. "Their duties were, in case of conflicts arising with other nations, to give an opinion based on the merits of the case, upon the question of war and peace, to declare war or conclude peace, or to give the sanction of religion to both acts."[1] They demanded satisfaction of an offending neighbour: granted a month for reflection; after an unfavourable reply they discharged a bloody spear into the land of the prospective enemy and declared the war to follow 'justus.' Thus, as Revon points out admirably, a war that would violate the most elementary notions of justice and fair-play might, if the religious procedure had been carried out, be labelled just. That which seemed so promising turns out to be "pur formalisme et rien de plus."[2] It will be unnecessary to analyse the functions of the "recuperatores,"[3] whose real duties are somewhat obscure but who, undoubtedly, in no way modified in the direction of peace the action of imperial Rome.

The establishment of the universal dominion of Rome under the Caesars once and for all precluded arbitral methods of solving difficulties being used. One primal condition of such means being applied is the unimpaired—at least in theory—sovereignty of both contractants. This being lacking, another method had to be evolved and applied. We find early traces of special commissions from Rome being sent to smooth inter-city differences—one notably to Pisa. This developed into an appeal to Caesar later on and

[1] Sieffert. Dictionary, Artic. Feciales.

[2] Revon, op. cit. "Pure formalism and nothing else.

[3] See Greenidge. Roman Public Life. Ch. on "International relations." Maartens the Jurist, however, attaches much importance to them.

his decision was final. Dynastic disputes, encroachments and aggressions all received adjustment from the Emperor.

The conception at the root of this subordination to a single head, this entire absence of devolution is most important and was fraught with many fruits, good and evil, for Mediaeval Europe. It was universal sovereignty. The "Majestas Romani Populi," incarnate in the person of Caesar, was so huge and powerful a creation that men's minds began to be convinced of the natural inequality of states and the righteousness of the assumption by one of sovereign power over the rest. The theory followed the fact and obtained justification from the inestimable benefit to humanity of this centralised domination. We quote from Laurence a passage that will confirm our estimate of the utility of Rome's career of conquest, which Robertson,[1] in the course of a controversy with the late Professor Ritchie, in our opinion, unjustly anathematises. "It stood," says Laurence, of Rome, "between the world and anarchy, it protected civilisation against barbarism, it united the nations by moral and material bonds, it kept the Roman peace within its boundaries, and it held at bay beyond them the savage hordes who longed for the plunder of its rich provincial lands." . . . "No wonder that memories of world-wide sway were so deeply graven on the minds of men that, long after Rome had fallen, her conquerors strove to build anew the fabric of her greatness and their chieftains could think of no alternative to tribal sovereignty but universal dominion."[2]

Our concluding task is to look into the secluded domain of poetry and philosophy for signs of an aspiration towards an era of peace. The search is well-nigh fruitless.

[1] These two articles and discussion in the *International Journal of Ethics*, April 1901, are important.

[2] International Law. Initio.

Pictures of peaceful days we do meet, isolated images of great beauty and felicity, but anything approaching a conception of peace as peace, *i.e.*, a time when the law of reciprocity overcomes the law of force, we cannot detect. The Augustan poets, to use Kamarovsky's phrase, certainly had a "soif de la paix," but merely as a relief from the unutterable chaos and confusion of a long and bloody reign of terror, not from a positive conception of peace as justice. Nay, the temper of Roman poets is given in the apostrophe of Virgil's, which may stand for us as a summation of this chapter :

> "Tu regere imperio populos Romane memento,
> Hae tibi erunt artes; pacisque imponere morem
> Parcere subjectis et debellare superbos."

CHAPTER IV.

The "Völkerwanderung" and Christianity.

The chief object of this chapter, from the point of view of method, is to preserve the continuity of a study which is rather a view of the ground than an exhaustion of detail. Our aim is, as will appear from the previous chapters, to combine a broad outline with occasional sketching in of detail; it being also a new treatment it must needs be critical, and in pursuance of the latter exigency it is necessary to glance at the rise of Christianity and see whether—apart from all practical questions of expediency—from the point of view of scientific truth the position of the Quakers is tenable; whether the Anglo-American Peace Societies, which have inherited most this religious spirit, correctly appeal to early Christian teaching; and, lastly, whether the summation by Dr. Darby Evans of this position should be adopted or rejected.

This profession of faith will be quoted because of the admiration that is due to his work and also because it is the noblest statement of the power of religious aspiration to be met with in peace literature. Destructive criticism of this spirit would be easy. Material for ridicule is all too plentiful. It is only a year or two ago that a Bristol gentleman[1] published a pamphlet on our subject, evidently meant for a large audience, full of the spirit of love and self-sacrifice, but so replete with foolish applications of misunderstood scriptural texts as to make it desirable, if possible, to make a protest against what it is a thankless task to criticise—the sincere and well-meaning. However,

[1] J. W. Green.

we cite the most eloquent and most convincing statement of this ideal. "Convinced," says Dr. Evans, "as I am to the inmost core of my nature, that the only hope of the world is Jesus Christ, and that only in His laws and precepts and spirit are to be found the most practicable policy and the truest expediency, and behind both policy and theory the great force by which reform and regeneration of society are to be accomplished; convinced as I am that all progress is illusion—a mirage, a shimmer of glittering sand—which does not enshrine the mind of Christ, righteousness, brotherhood, union and self-sacrifice in the heart of the world, and that His spirit and laws are sufficient for all purposes; convinced as I am of these, I am bound in sober earnest to look upon any attempt to accomplish great reforms without Him, as the adoption of means which have their necessary and effective force left out."[1] Truly a grand sentence. Still, still, it is unsatisfactory in that it is an overstatement while trying to be an understatement. There is nothing to be urged directly against it, but the reader will see that in such a perfervid atmosphere all things are possible; such things as the production of unscientific answers to scientific problems, the mutilation of authorities, and, in the light of "Love thy enemies," a total disregard of the claims of war upon the recognition of mankind—as an instrument of progress. The only support in this country, that is avowed support to any criticism of this spirit in a sympathetic manner, is Mr. Ryder's "Ethics of War," quoted in the Introduction. This chapter must substantiate that criticism.

I.

The Pax Romana held its aegis over western and southern Europe from the Tay to the Halys, embracing in

[1] Dr. Darby Evans. "Herald of Peace." Article on Peace Societies.

its majestic clasp all that seemed of value in the world of its day. It had an army, but an army that grew weaker, a military spirit that was softening, a moral fibre that was fast becoming a bruised reed, and ever the danger grew greater. In the north and east there was a huge, unexplored mass of barbarism which now and then a handful of Roman legions streaked with a red path, but which closed over the wound with astonishing rapidity. Far back in the central East was the "foyer" of a wandering of peoples urging ever outwards an inexhaustible store of savage humanity. The object of war is the attainment of security. Was the war-built fabric of Latin civilisation to maintain secure from invasion the huge area it had tranquillised by the sword? History records the negative answer of Nature. Security she will go through oceans of blood to attain; but she does not over-estimate the blessings of mere peace. Peace is for those that can maintain it "vi et armis." The corruption and vice, the effeminacy and neurosis of the later empire rendered it unfit to maintain possession of the best part of the world. To have wiped the world clean of it would have been a calamity; it contained much that was worthy of preservation, a language and literature that formed a repository of the experience of a great and masterful nation. The blast was mercifully tempered a little.

Impulsion from behind made the Teutonic tribes, despite terrible defeats, overflow the Roman bulwarks on the Rhine in the third century, and from that time to the fifth there was that breathing space which meant salvation. The latter century marked the end. Diocletian, Constantine, Julian and Theodosius threw themselves into the breach and managed to save and store in the East sufficient to start civilisation later on upon a grander and more glorious path. But in the West the barbarians overran Gaul and

Africa and could not be debarred from the great city itself. They became the pullers of the strings in an absurd puppet show; they controlled the entrances and exits of shadowy emperors, and cut each other's throats for the baubles of a ruined world.

In this fifth century we can distinguish three great waves of barbarism. The Teutonic races—softened slightly, be it remembered, by their wait of several centuries—led the van. Behind them again the Slavs harried and slew and moved, but their movement was no aimless one of a migratory tribe. It was a terrified flight before the savage Turanians pouring out of central Asia in incredible numbers and of brutal ferocity. The first assault was commanded by Alaric, the Visigoth, one of a race long in contact with Rome and possessing a native teacher of Christianity. After the execution of Stilicho, resistance was at an end. Alaric was master of Rome, "by God's will and call," in his own words. His Arianism served him at least with that retort. The empire still had prestige to assimilate in a measure its conquerors; it rewarded its plunderers with honours and titles, and still lived as a name.

The Vandals came too, in quest of kingdoms and found Gaul and Spain open; the first Burgundy was established and the Franks appeared on the Rhine. The West Goths drove the Vandals over to Africa and set up a huge empire of the shadowy form these early reorganisations took. It promised well, embraced all the territory of the Western Empire and possessed many large cities. Vandalism soon cut off irretrievably one portion of it from hope of peace and new life. Genseric ruined the Province and almost dealt a death-blow to Italy. Religion was at his elbow, too. When on a piratical expedition his pilot asked "Whither shall we sail?" The answer came, "Sail to those with whom God is angry" a practical illustration of Joseph de Maîstres theory of war as retribution.

There was yet another trial for weary Europe. The Huns, a common race with the Tartars, Mongols and Turks, the greatest enemy, at that period and now, to all that civilisation in our western eyes embraces, were at hand. It is well to realise that we still hear this race knocking at the door of Europe, which must, therefore, never be left unguarded. "Si vis pacem, para bellum." Before this Turanian horde finally blighted the West, recovery there was possible and indeed probable; the subtle affinities of race, language and moral ideas between German and Latin, Gaul and Goth might easily have allowed a composition and assimilation one to another; but the Huns were in every way a world distant from them all. Attila led them; their course was one of avowed rapine and plunder—there was no attempt to exploit, robbery served. The insatiate rapacity and indiscriminate destructiveness of this race finally wrought the ruin of the great Roman Empire. Posterity was no longer continuous with it. Western civilisation began again, and the nations each in turn carved out of its ruins a niche for its own ideals and aspirations.

Nature's selected instrument for the maintenance of peace had been imperfect; a fresh beginning had to be made. The first incursions of the barbarians were wars of conquest of a peculiar type, motived by aspiration towards a participation in a higher civilisation by super-imposing themselves upon it as the exploiting aristocracy. This seemed likely to mature—a Norman invasion anticipated. The last inroad was of the nature of a plunder raid—an aimless, destructive ramble, where lust of fighting and hope of booty led, a movement controlled, directed, and in a measure systematised by a great chieftain. While such groups of men exist on the globe, as long as raw material for an Attila remains, so long will war be a useful

instrument for progress. Culture, loving-kindness, brotherhood and self-sacrifice must yield to the imperious necessity of defence against such races. The Turks, for instance, to-day, must not be allowed an inch of rope, which may lead to aggression and the extinction of any sacred ideal of western nations. Condemnation of all war is common; all writers on arbitration flirt with it, but while Armenia and Bulgaria, Crete and Greece still touch this antithesis of our moral and political ideas, it is impossible to discard our right hand. Turkey is the greatest military nation in Europe. Let us remember the fact with the story of the Huns to point the moral. The Yellow Terror may be a chimera, but the danger of the Near East is both real and constant.

Such, then, to resume, is the exterior history of the first five centuries. Internally one movement is notable above all others, and that is Christianity. It, too, has lessons for us.

II.

The spirit of the criticism to follow is well expressed by Mr. Ryder. "If it is of importance that those who have Christian objects at heart," he says, "should understand one another, should agree where they can, and, where they cannot, at least have a distinct idea of their difference; then it is everyone's concern that this extravagant misconception of the doctrine of Christ and of the early Christian Church should be finally evicted from the manifestoes of the seekers after peace."[1] To get at the heart of the matter, these misconceptions are two-fold. The first series circles round the New Testament, and misreadings there lead to a long line of propositions, anent war, being promulgated as the teaching of Christ. The Quaker Peace Societies were built

[1] Quoted above. Footnote in Introduction.

upon these doctrines. The misconceptions as to the teaching of the Early Church run parallel. But there is another point to be elucidated, and an extremely important one, in as much as most writers, and among them Revon and Dreyfus,[1] consider the advent of Christianity upon the world as the turning-point in the development of arbitration, and consequently the foregone impossibility of an international understanding unless based upon Christian principle. On the face of it such an "idée fixe" must vitiate a scientific inquiry; and leads to an entirely wrong view of the nature of such a sub-organism as arbitration.

Now as to the scriptures; not only is it impossible to support from them a prohibition of war, but we have in the words of Christ a recognition of the lawfulness of war. It is true that the universal nature of Christ's kingdom is expressly stated,[2] that all nations are of one kin;[3] there are counsels of perfection to Christians to love their enemies[4] and to love their neighbours as themselves,[5] and on this platform, though it can be paralleled in each case elsewhere, the ethic of Christianity stands head and shoulders above that of the Eddas or the Koran, but on the question whether war is, under any circumstances, justifiable and lawful, the evidence is defective. Indeed there is Christ's declaration to Pilate: "If my kingdom were of this world, then would my servants fight, that I should not be delivered to the Jews"; this text is the crucial one: there are other contributory sayings in support, but until this one is

[1] Le moyen âge est une époque incomplète et inégale. Il est difficile de dégager son droit des gens du chaos des moeurs et de la confusion des institutions. La guerre est partout et "il n'y a plus d'autre droit que le droit du poing (Faustrecht)" Le Christianisme seul incarne l'unité et les principes d' humanité. P. 21.

[2] S. Matth. 8-11, 28 (19-20). Mark 16-15. Luke 13-29, etc.

[3] Acts 17-26.

[4] S. Matth. 5-43-48. Luke 6-27.

[5] Matth. 22-39. Mark 12-31, etc.

explained away the case falls to the ground. Yet it is strangely read. Mr. Joseph J. Green of Bristol, in a tract, "Is war consistent or not with Christianity,"[1] contorts this text round to directly the opposite meaning it in reality encloses, and thus concludes: "A distinguished Dean, a man from whom we have a right to expect better things, has actually tried to prove lately from the Gospels that Christ approved of war because He did not verbally denounce it and the men who took part in it." This was written in 1901. A mid-century writer has this passage, which will serve as conclusion to this portion of our argument: "Christianity does not forbid those attacked to defend themselves, either by promise of an extraordinary intervention of Providence on their behalf or by enjoining them to submit without resistance to the unprovoked aggressions of any nation which may choose to make war on them; and to human judgment this course would only lead to calamities more dreadful than even those of war itself."[2]

Nowhere better than here can we appreciate Tolstoi's position. He refuses outright to sanction violence of any description, and his solution of our problem is therefore wondrously simple. "The only way to end war is for those who do not wish it and who consider it a sin to participate in it to lay down their arms and refuse to fight."[3] The same proposal was made by Tertullian and Origen. It has been done by the Quakers, the Memnonites, Nazarenes and the Doukhobortsi. This spirit, based on the one hand on incorrect interpretation of Scripture, errs equally upon the attitude of the Early Christian Church, as we shall proceed to show.

[1] Mentioned above.

[2] Kennedy. "Influence of Christianity upon International Law," p. 11.

[3] Delenda est Carthago. *Arena*, 22, p. 202 *seq.*

St. Ambrose is one of those held up as examples to degenerate, warlike Europe. He was, indeed, above the average early bishop, but his rejoicings in the victories of that inhuman monster, Theodosius, are notorious. Ambrose, indeed, imposed a penance upon him for his massacre of ten thousand of the people of Thessalonica but also warmly justified the burning of Jewish synagogues. In addition to his seventh sermon, there is a distinct allowance of the lawfulness of war in his other writings. St. Bernard deprecates the military spirit, but a reason apart from the controversy as to the justification or condemnation of war can be found. Tertullian and Origen also frown upon Christians becoming soldiers. There is no doubt that the rival religion to Christianity, especially among the soldiers, was the worship of Mithra—a special war cult introduced into Rome by Pompey's soldiers from the East. This worship was paramount in the camps—traces of it having been found in Britain—and any recruit to the legion must of necessity participate in the rites and ceremonies connected with it. Whence, a Christian writer could not fail to throw his influence upon the side of peaceful pursuits, where similar cults did not exist to the same extent. This reason is reinforced by the fact that such a conspicuously secular occupation as making war was eminently unsuited for a Christian, whose distinguishing mark at this period was a strong tendency towards asceticism and aloofness. A Christian legionary was not uncommon however. Tertullian's story of the Thundering Legion in 174 A.D. shows that in the army of Germany there were considerable numbers of Christians. Against an accusation too, that Christians were unprofitable members of society, he says "Navigamus et nos vobiscum militamus."[1] His teaching does not amount to an assertion that all war is

[1] Apology, ch. 42.

unlawful. St. Athanasius, too, is outspoken. He, despite all scriptural interpretation, does not hesitate to write "To slay adversaries in war is lawful and worthy of praise,"—an opinion which should earn the condemnation of modern writers equally with some naked advocacy of might is right on the part of barbarian chieftains. From Augustine's, "De Verbis Domini," we find the remark, "militare non est delictum, sed propter praedam militarem peccatum est,"[1] a division that legalises wars to spread the faith, though not wars to spread political sway. Lactantius alone will fit the ideal demanded. His polished Latin enfolds thoughts that, for exaltation of love as the supreme guide in all relations, can only be matched by the early Quaker tracts.

Thus Ryder's criticism is just. The Early Christian Church never was consistently from a high ethical standpoint the hater of war and violence. Only half, however, of our task is done. We must find out whether, as may logically be deduced from Revon and his predecessors, for instance, had the Greeks been put in possession of Christianity they would have developed a better system of arbitration—that is, indeed, whether we may consider Christianity as *directly* a determining cause of its development or whether arbitration is the outcome of a series of changes in the relations of States tending towards political unification, towards which final end Christianity may work, as it notably in one case did, or again may be the disintegrating influence, as at another period. The question may be worded also thus : Has Christianity always worked towards arbitration? If so, the future of arbitration is bound up in the future of Christianity, and the development of rationalistic democracies and materialistic socialism

[1] This was incorporated in Canon Law along with "Justum est bellum, quod ex edicto geritur de rebus repetendis aut propulsandorum hostium causa." Isodore, Etymol. See Kennedy, op. cit. p. 15.

is an enemy to its development. Or, has Christianity sometimes led up to, sometimes led away from, pacific relationship between States? If so, in whatever other respects materialism and socialism are to be deplored, from our point of view, they are friends, not enemies, in so far as they work for the reduction of armaments and the curtailment of arbitrary power in the hands of a ruling caste.

The prevalent conception of early Christianity is that of Revon—a sudden "lumière" in the surrounding darkness; that once it became extended all pagan notions shrank before its purer light and that the world began thenceforth a progress upon a distinctly higher level. All historians of Christianity since Gibbon lend no credence to such a view. Christianity in its earlier stages progressed because of its powerful organisation, derived from the Judaic theocracy, and because its wide basis attracted adherents from all pagan sects. Its concrete ceremonial and not its ethic was the chief motor force. Christianity, too, attained to influence and power when it was still possible to arrest the decivilisation that was in progress. This it never succeeded in accomplishing. By concentrating upon the internal as against the external activities of the individual it killed education and literature, and thenceforward the decadence advances with accelerated pace. The one moral tonic which tended to a betterment of society was the premium placed upon chastity and celibacy, a deprecation of infanticide and a care for the poor. But such reverence for asceticism could only arise in a society of great corruption; so it was. "St. Chrysostom in the East, and Salvian in Gaul, testify that alike in licence and in cruelty, the Christianised State at the beginning of the fifth century was the worsened copy of the pagan world of four centuries before."[1] Gibbon will furnish the detail of murder, treachery, vice and superstition. The greatest

[1] J. M. Robertson. "Short History of Christianity."

blight of civilisation was still allowed to exist and extend. Slavery was untouched and even unchallenged, while no evidence is forthcoming that the lot of the serf was in any way bettered.

This short criticism, which the historians substantiate and amplify, will perhaps serve to tone down the demands made on behalf of the early Christian Church by writers on arbitration. But the Church had another and later phase. It became recognised, became a court religion, and thereby entered upon a career not only of sycophancy but, indeed, of blood-stained conquest hand in hand with a repressive bureaucracy.

The normal course of expansion of the Christian Church after it had found its feet and permeated the empire was to appeal to the king of a country. These princes, once convinced, the baptism of their subjects in droves followed as a matter of course. Augustine baptised ten thousand Angli in Kent on Christmas Day 597. Heraclius in the East dragged multitudes of Jews by force to baptism, and it is therefore little to be wondered at that wholesale relapses were common. Everywhere the Church used the sword to impose its religion upon the barbarians. The Englishman Boniface converted some portions of northern Germany at the head of an armed force, which served equally well against his rivals in this missionary work. Charlemagne and the Church went hand in hand to subdue the free Saxons, and after thirty-three years of terrible struggle, bribed the survivors to the faith and to submission. In the Scandinavian countries the founding of Christianity was a life-and-death struggle, lasting close on three hundred years, between local liberties, bound up with pagan rites, against the centralising system of the Church and the king. It nowhere refused its sanction to an expansive policy. Knut, the Dane, pursued a career of aggression under its aegis. All this was prior to the period when, having

become a huge and powerful State itself, the Church began to check rival claims, be they from Duke or King. Heathen Bohemia for seventy long years was smitten with the united swords of a Duke and the Christian Church. Poland was won in a similar fashion. Among the Wends we see again national liberty and paganism face to face with tyranny and Christianity. Gottschalk, the pious founder of the Wendish Empire, was overthrown the same year as the Norman Conquest and put to death.

Century succeeded century with large increases in the adherents to the faith and large tracts of country devastated by the sword. The Finns and the Slavonic Pomeranians submitted. A pitiful complaint of the latter people is recorded. "Among the Christians are thieves and robbers; Christians crucify men and tear out eyes and do all manner of infamies: be such a religion far from us."[1] Livonia could not be won by preaching, but force was successful in the end, though one remnant which was utterly unsubduable sought refuge among the heathens of Lithuania. The conclusion is that the seven hundred years of Christian expansion in northern Europe was a long proselytism by the sword in the interests of kings and tyrants who upheld it, as against the resistance of their subjects, who saw in the Church an instrument for their subjection.

What of these armed conversions in our estimate of war? It is first of all to be noted that a purely religious war is never undertaken. War must pay its way, or hold out the prospect of being likely to, before it is undertaken, and these struggles consequent upon expansion are the ordinary phenomena of empire-making, though it is rarely the case that petty tyrants can obtain the help of such a strong religious body as the Christian Church to effect their purposes. These wars, however, from an evolutionary point of view, enlarged the units of political sway; brought

[1] Quoted by Robertson, op. cit.

into relations with one another groups which before remained absolutely independent, and finally started that long development, which is not yet completed, but which tends towards union of a federate nature. Thus it is useless to regret them; nay, they were salutary and necessary to the progress of Europe. It is of importance, however, to remember them when extravagant claims on behalf of Christianity are urged by the friends of peace.

The other side of the picture — the progressively beneficent influence of the Church, despite blunders and worse—it is not important to dwell upon, because it is well known and homologated by our hearts, and further because we shall have to trace it in outline at the beginning of our next period. But we have left arbitration far behind. Are there no fragments to be collected in all these centuries? No: we hear of two cases of the use of pacific machinery, but the period as a whole confirms and strengthens our estimate of arbitration. None of the essential conditions to its growth are here present. There is no group of States which have measured each other's strength in every way and have come to stable equilibrium; this being lacking, the consequent development of affinities of all kinds which hold within themselves the possibility of recourse to arbitration is not found. In fact pacific methods of obviating international disputes are only to be found where society is fixed and firm, bolstered by laws and constitutions or held together by strong hands; the period of the Völkerwanderung had, least of any, this stability to show.

The racial affinity among the barbarians, however, was extraordinarily strong: it sometimes overpowered all other hostile influences and must be regarded as the root cause of the few instances of arbitral methods extant.

Procopius relates that upon one occasion the Gepidae proposed to settle a quarrel with the Lombards by arbitration; the further steps in the matter are not recorded.

Cassiodorus has preserved rather a remarkable instance. "Ambassadors," he writes "of Theodoric, King of the Ostro-Goths"—a Teutonic people of Arian faith originally —"carried letters to the King of the Herulians and the Varnes. Their mission was to beg him to choose princes to join them and the envoys of Gondebaud in inviting Clovis, King of the Franks, to cease his wars against the Visigoths and to accept the arbitration of the united kings." Clovis consented.

This instance is remarkable, and only the close affinity of the tribes concerned can explain it. What procedure was followed and the nature of the settlement we should much like to know, but the above is all we have recorded. To adopt modern diplomatic language, the case is really one of mediation and not arbitration at all, being on the face of it a case of "bons offices," from which modern jurists expect so much; it is a remedy which has many good points, discretion, elasticity and the like, but not once has a nation in modern Europe availed itself of the system, though often called upon to do so by the great treaties.

To conclude this rather intricate chapter: the Roman Empire had passed away and the new Europe had arisen. Christianity, from the fall of Jerusalem, began a career of expansion which divided naturally into two stages: first, its growth from below throughout the decadent Roman Empire; secondly, its recognition and subsequent imposition upon the tribes of northern Europe. In the first period it was torn by heresies, in the second it used the sword; in both it was in the grip of an evolution at once certain and inexorable. One more era of militant expansion by the Church and the time of legitimate appeal to man through a noble ethic and powerful spirituality begins—of it more anon.

CHAPTER V.

The Second Great Age of Arbitration.

I.

In our last chapter we found reason to challenge the conventional view of Christianity being *the* efficient cause of civilisation in Europe. Indeed the truth is, as sociologists know, that Europe, a resultant of complex political and culture force, has had a reactive effect upon Christianity, which is the hope of mankind in so far as it is an adaptable and progressive ideal. Our next task is to look at Mediaeval Europe and explain the harvest of pacific solutions of international difficulties. The most fruitful clue is that strange phenomenon the Crusades. Guizot has a generalisation upon them which brings out for our purpose their salient characteristic. "Le premier caractère," he writes, "des croisades, c'est leur universalité; l'Europe entière y a concouru; elles ont été le premier événement Européen. Avant les croisades, on n'avait jamais vu l'Europe s'émouvoir d'un même sentiment, agir dans une même cause : il n'y avait pas d'Europe."[1]

Pope Sylvester II., as early as 999 A.D., is known to have sent a request throughout Europe for a confederate army to serve against the Turks as a bolster to the Church of Jerusalem. The date is significant in as much as the evolution of the nations was so far complete by this time as to make the aggregation of a composite army quite within the bounds of reasonable hope. As Guizot points out, a Europe in the modern sense, as distinguished from a mere

[1] Guizot 8th Lecture.

geographical congeries of petty principalities, had at last emerged from the stress and strife of barbaric invasions. Nations of definite shape and with some degree of stability had come into being. The struggle between Goth and Frank for race supremacy was at an end. Time had decided for the Frank. Arianism had yielded all along the line to Catholicism in the West. The position of Europe was very doubtful : it was surrounded by still more races of barbarians than had been even the early eastern borders, which, however, were being successfully kept at bay. Charles Martel had stopped the Saracen for ever and a day at Narbonne and Poitiers; while Charlemagne had checked him upon the banks of the Ebro. The countries, too, where the Roman civilisation had lasted long and penetrated deeply had drawn upon this ancient heritage to the extent of permanently latinising their speech. England had been welded together and was now a nation, prepared to act in a corporate capacity, so full of youth and vigour that a generation or two sufficed for it to assimilate a conquering race. The year 999 A.D. also saw a new page turned in papal history. The licentious puppets, weak and fitful, were to be soon replaced by men who, if not endowed with a nice sense of morality, were yet redeemed by strength of will and purpose. The mediaeval empire started upon its curious course in 962 A.D., and twenty-five years later Hugh Capet became King of France.

Thus, the call to crusades was opportune. The distractions of the preceding centuries were on the way to a termination; and the huge influence of the crusades is partly attributable to the summons being given while yet each king and baron had enough to consolidate and organise before he could inaugurate any schemes of aggrandisement.

The Church, of course, focussed this new group of nationalities. It was in many ways especially fitted for the task.

In the first place scarcely a king in Europe could fail to acknowledge the help the Church had given him in establishing his own power and weeding out all tendencies to disruption; moreover, he was still in a position of dependence, for in many states the work was not complete. Secondly, the Church had all the prestige of age and dignity. Century after century she had reared her head higher and yet higher. Thirdly, there was her position, not only as leader in religion, which in such an age—especially as all heresy had been uprooted—was the greatest factor of all, but also the peculiar position she had from the first taken as dictator in certain matters relating to peace and war. This point is of the utmost importance.

A combined motive of earnest faith and assertion of authority had led the Church to promote peace as far as possible throughout Europe. In default of being able to put an end to private war in particular, the Treugae Canonicae were promulgated. These Truces of God covered a great portion of the year. Not only was the warrior forbidden to draw his sword after Wednesday night until the following Monday, but from Advent to the eighth day after Epiphany and from Septuagesima to the eighth day after Easter were no wars or raids of any description to be undertaken. Later on we find "Concilia" putting certain districts, as it were now-a-days, in a position of permanent neutrality, guaranteed by the power of the Church. Thus the Concilium Tolosanum in 1229 decreed peace in the south of France for a period of fourteen years, and the Concilium Melodunensis in 1232 strongly called to account the Comte de Toulouse because he had not observed a peace to which he had been a party four years previously. But the aims of these ecclesiastical bodies extended sometimes to wider spheres. The Conventus Episcoporum, which was assembled in 1199 A.D., and the Concilium

Meldense of 1204 met with the professed object of concluding peace between England and France. The results of these efforts we shall have to trace later, but note the tendency that these assemblies exhibit.

Firstly, it is apparent that the Pope had attained, for the reasons stated, to a position over and above all the separate nations in Europe, no less for the spiritual nature of his office than for the purely temporal advantages or disadvantages it was in his power to give to or impose upon ruling houses. Further, the immense organisation of the Church, its democratic institutions, its universality and unity, all combined to link together closely the various peoples of Europe. That which affinity of race and language, of national ideals and aspirations, failed to effect, the dignity and power of the Church was able to bring about. When we come to deal with the actual cases of arbitration, we shall have to mention this peculiar unifying tendency of a common faith, but meanwhile perhaps enough has been said to account for the universality of the Crusades that Guizot remarks upon.

In pursuance of our double function of tracing war and the means of abolishing it through the pages of history, an estimate must be given of the Crusades as wars, and not merely as an instrument for social metabolism in Europe. In so far as the motives of the Papacy were pure these fall into that rare class of wars—the war waged simply to propagate a religious belief. The precise position of the Popes is not clear, but the spirit of their instruments is beyond doubt. Religious zeal, helped by indulgences for two centuries, waged the most foolish wars that perhaps were ever undertaken. Civilisation benefited undoubtedly. The fatality of things sometimes brings much good out of evil, but looked at from the lowest platform of utility, the Crusades leave much to be desired. "To all," says Mr.

Robertson, "who could sanely judge, it had become clear that the Crusades were at once a vast drain on the blood and treasure of Europe and a vast force of demoralisation." In another place he continues: "It is a reasonable calculation that in the two centuries from the first crusade to the fall of Acre (1291) there had perished, in the attempts to recover and hold the Holy Land, nine millions of human beings, at least half of them Christians. Misery and chronic pestilence had slain most, but the mere carnage had been stupendous."[1] Such insane sacrifices for an idea which a future age condemns, tune our minds almost to accept Benjamin Franklin's saying, "In my opinion there have been no good wars and no bad peaces." Truly such a drama of bigotry, cruelty—for that was unparalleled—and crime is not only nauseous to a modern mind but almost unthinkable. The ravages of the Huns have more claim to a reasonable explanation than these journeys of devastation, which a lying history has clothed in the garment of chivalry.

Yet we must note the effect upon Europe. It was in the Crusades that Europe found herself. The charm of synergy, in a cause which stood, as Louis IX. expressed it, for "the highest service that man could do to God," knit the rebellious barons and masterful kings together for a time. Such union, though not lasting, was in each Crusade, or each attempt to organise one, renewed, so that when the Church called upon them to set aside their quarrels for a nobler and divine task the appeal was generally successful.

From that state of affairs to a spontaneous desire to settle a feud or difference by pacific machinery was not a long step. The earnest faith of many of the great Churchmen infected the rulers of Christendom and kings of a peace-loving and peace-making character were almost as common as their opposites.

But an important point is to be noted which contributes

[1] Robertson. Short History of Christianity.

greatly to our conception of arbitration. Case, in the Arbiter in Council, points out that Louis IX., whom the Sire de Joinville celebrates for his justice and love of peace, was an obstinate Crusader; his estimate of the 1248 Crusade we have quoted above. Such a temper—the union of peace-making and war-making in a harmonious whole—indicates clearly for us the character of the spirit which prompted the Crusades and likewise the circumscription of the boundaries wherein conscious efforts and sacrifices are made to ensure peace. This parallel course of war and the elimination of war will provide us with a tentative conclusion. Arbitration we have come to regard as the organisation—or rather material evidence of an organisation—of a group of states which are tending towards incorporation of some of their activities, if not all. The new hypothesis which fits the Europe of the Middle Ages is that under no circumstances can arbitration appear between States one of which is outside the limits of this partially organised federation. That this conclusion holds for the Mediaeval period will be evident from our treatment of the instances of arbitration below, and further, to retrace our steps, it is a conclusion which evidently harmonises with the system of arbitration developed by the Greeks. The first great age, equally with the second, shows—as *a priori* might be deduced from the analysis already attained—that arbitrations between Greek and Persian or Greek and Phœnician are no more to be met with than tribunals to decide differences between Christian and Saracen or Spaniard and Moor. In the nature of the organism lies the reason for such extension not being possible.

Further, it is rather significant to note—an hypothesis to be taken into account later on—that the use of pacific methods of settling disputes may lead to war in this sense: Europe without the tendencies towards internal unity

evidenced in the crop of arbitrations existent, would not have been able to wage the Crusades. In a similar way a not unreasonable supposition may be made with regard to Greece. Had the appeals of Isocrates and others ended in the Greeks settling their own differences by arbitration, the conquest of Asia might reasonably have been achieved by a federated Greece, as ultimately indeed it was carried out by Alexander after conquering Hellas. Should this be regarded as legitimate, we have support for our inference that one result of arbitration is, in addition to pacifying small areas, to enlarge the wars that are still waged. That is, in the limit so to speak, war tends to disappear, and that, too, in the line of the evolution of continually greater units between which it is waged. The story of the disappearance of private war is instructive and illustrates this tendency, but unfortunately space will not permit of its analysis. The wars of last century and those of this have been waged between powers, each of which holds considerable portions of the whole earth under one sovereignty. Now undoubtedly, in the past, arbitration, as an earnest of a close association, has helped to build up some of these units. Should we, then, accept as just the opinion of the "Arbiter in Council" respecting modern Europe: "It is but a proof of the narrowness of our minds and the poverty of our imaginations that we do not see more clearly the heralds of an approaching unification, the sure presages of a not far distant and a perpetual peace?" Who shall affirm that the "Arbiter" stands nearer the truth there than those who expect, not perpetual peace, but wars between larger units than even any one of modern nations and for larger stakes than ever before have been the centre of strife?

But more of this in our third period, where its significance will be more apparent.

II.

In all those manifestations of a pacific temper obtaining among a group of nations, the Middle Ages has a plentiful stock of examples for the student. Be it noted, also, that the centuries which have passed have consigned many Mediaeval records to oblivion, and that, too, in an age which was neither very prolific in the making of books nor very favourable to the diffusion of them. Hence it is legitimate, if anything, to over-estimate the actual instances of pacific usages, because these may quite probably be only the remnants of a huge mass. The actual remainder, however, is enormous. None of the great writers have done justice to the Middle Ages, actuated by that "idée fixe" we have remarked upon before—a superb conceit in modernity and a withering contempt for the past. Thus their treatment of the Middle Ages is unsatisfactory. Dreyfus quickly dismisses it. Revon, always voluminous, says little to the purpose and blunders in one instance at least, while Kamarovsky's treatment is the basis of the other two. In truth, to use Valmigère's picturesque word, the library and archives of Europe "fourmillent" with indications of the pacific temper of XIth to XIIIth century Europe.

Before dealing with arbitration pure and simple, we have to note some peculiar phenomena extremely significant of the age and its spirit. In the early part of the 12th Century there is an interesting account of a plan which, in many ways, anticipates the more famous "dessein" of Henry IV. and Sully. Schmidt's account preserves the phraseology in a measure of the original, and that must be our excuse for the quotation: "Gerohus de Regensburg, dans son saint zèle, avait déjà formé un plan en conséquence duquel le pape devoit défendre la guerre à tous les autres princes. Si quelqu'un d'eux avoit quelque chose à demander d'un autre, ils devoient se soumettre à la

décision du pape. La sentence une fois portée, la partie qui ne s'en accommoderoit point, seroit excommuniée et deposée ; mais au contraire la partie soumise seroit excitée à la guerre par les prêtres (tubis sacerdotalibus), tous les princes seroient appellés à la defense et quiconque refuseroit de detruire les impies Amalécites et de fondre sur le roi Agag, seroit privé à juste titre d'une puissance dont il abuseroit ainsi.''[1]

The conception of such a plan is a splendid indication of the extraordinary state of Europe at that time. The strong sanctions laid down to consolidate this new organisation of the nations seem to point to the possibility of such a plan being carried out—at least, certainly, it was no more utopian than the Grand Dessein, and the eulogy that the '' Arbiter '' has of the latter scheme would apply equally to this : '' Whatever its origin or authorship, whether we look at its intrinsic merits or at the novelty and grandeur of its proposals, it must be considered the most comprehensive and attractive, if not the most influential and important, of all proposals for the reconstruction of society.''[2] The objection as to the purity of the motives which inspired it can be set aside when we remember some of the necessary conditions to the success of Henry IV.'s proposal. Though Gerohus did not have the power of a king, his proposal does not fall far short of the plan which Sully conceived in the interests of his royal master.

Kamarovsky mentions two other movements which have

[1] '' Histoire des Allemands.'' Vol. IV., p. 232. '' Gerohus of Regensburg, in his saintly zeal had already formed a plan : the Pope must forbid all the princes of Europe to make war. If anyone of them had a complaint against another, both must submit themselves to the decision of the Pope. Excommunication and deposition was the penalty for any deviation from his decree once promulgated. Priests would rouse the other side to action and all the other princes would be summoned to the defence, and whoever should refuse to destroy the wicked Amalekites and attack King Agag, would rightly be deprived of a power they thus abused.''

[2] '' Arbiter in Council,'' loc. cit.

a strangely modern appearance. "In 1182," he relates, "a person called Durant founded in France a peace society —a 'confrérie de la paix'—which had as much if not more success than modern organisations of the kind." It is recorded that it won over to its ranks many people of all classes.

Again there was that strange phenomenon of the "I Bianchi." This movement, which attained great extension in the last decades of the XIVth and the early part of the XVth century, was the result of a vigorous propaganda by the Dominicans and Cordeliers throughout Italy in the thirteenth century. Friar John of Vicenza[1] seems to have acted the part of a travelling arbitrator; he reconciled towns and individuals in all parts of Italy—a success which followed S. Bernadine's teaching two centuries later. This active mission work permeated deeply, and the movement of the fourteenth century was a popular one. The "I Bianchi" were so named from the white garment which was worn by the multitudes which journeyed from place to place. Their primary object was the promotion of peace, and the success attained was remarkable. They had an elaborate ceremonial and appear to have been all imbued with a neurotic, religious ecstasy which, as always in a credulous age, gained them admiration and influence. They established friendly relations between many cities and barons. Their sphere of operations was by no means limited to Italy. "Quidam ex ipsis deinde in Gallias, in Angliam, in Germaniam et alias longinquas Christianorum regiones pergentes ultra quam credi potuit universos populos ad easdem ceremonias inducebant,"[2]—an account of which, even with a very large subtraction for obvious rhetoric, in-

[1] Sismondi's Italian Republics. Vol. II., p. 372.

[2] Some of them thereafter journeyed into Gaul, England and Germany, travelling incredible distances also to other distant Christian lands, and gained whole peoples as converts to their rites."

dicates an extraordinary and widespread peace propaganda. Congresses were then not the form such movements took, but these pilgrimages have a strange affinity to them.

With regard to arbitration, it will first have to be decided why it assumed the form it did: who acted as arbitrators and why: and, finally, what form of procedure was followed?

In the first place, then, Case, in the Arbiter, again furnishes us with a firm foundation. Having carefully scrutinised, with great learning and originality, the words in the various Teutonic languages applicable to arbitration, he comes to the conclusion that: "Altogether I incline to believe in primitive and indigenous forms of arbitration all over Northern Europe, the more so, that in the Welsh tongue, words for arbitration seem to abound."[1] It is, therefore, quite unnecessary to trace the survival of the Roman system, in as much as a native growth was at hand, ready for adaptation to any larger cases that might call for its use.

In the second place, the causes which determined the choice of the arbitrator are difficult to trace. Ward supports our whole argument in this passage: "There is a strong proof of the homogeneity of Europe in the custom, which began to be pretty general in the XII. century, of appealing to the Pope, or to a neutral power, when differences broke out between western potentates; and this not only with a view to engage their assistance or mediation, but also from the idea that their connections were sufficiently close, and their governing principles sufficiently similar, to justify such a course."[2] This, however, still leaves the question open; but combine it with the remark of Kamarovsky, "L'affinité spirituelle, établie entre les peuples au moyen

[1] Op. cit., cap. cit.

[2] Ward. "Foundations of International Law."

age par le Christianisme, succède un rapprochement dans la sphère politique et économique,"[1] and we must conclude that the reference to the Pope came first. The reasons are obvious why an appeal to him was common. The habit of taking before him a quarrel or case for redress would tend to familiarise the functions of an arbitrator among the nations, and thence, when occasion made it undesirable or impossible to go to the fountainhead, appeals were made in the first place to one of his representatives, such as an Archbishop, or, in the second place, to a temporal power. The Emperor of Germany would, *a priori*, in this later case seem to be the most favoured person for the dignity of arbitrator, but, strange to say, references to him are rather uncommon.

It must be noticed, in this connection, that the position of the papacy and clergy was fostered, and was, therefore, not wholly the outcome of public consent. The Bishops of Rome, undoubtedly, at one period were the most powerful sovereigns in Europe, and it is to Gregory VII. that we can trace the conscious ambition of the papacy to be set above kings. Their power was a direct heritage from God himself, and hence they constituted themselves judges in disputes and summoned to their tribunal all cases of quarrelling between peoples and princes. Innocent III., indeed, declared that the Pope was the sovereign mediator on earth—a claim which, combined with the universal recognition of pontifical sovereignty, served as a stimulant to arbitration and, in a measure, determined its form.

At this point, it is our intention to institute a comparison between the three great periods of pacific international relations. This parallel has never been drawn before, but, in its simplicity and completeness, it seems not only a great

[1] Le Tribunal International. Paris 1887. "The religious affinity, established between peoples of the middle ages by Christianity, was followed by an understanding in politics and economics."

aid to a scientific grasp of arbitration as a sociological phenomenon, but also to have a bearing on modern problems. Throughout the treatment of the preliminary period, one factor in producing the understanding between the Greek nations stood forth prominently. We refer to the Oracle of Delphi. As the hearth of Greece, it focussed the unifying tendencies that found play in the Hellenic World. Now, what we wish is to establish an analogy between the Papacy and "the god" of the earlier period, and to determine the relation of both to the phenomenon of arbitration. Should we be able to fix and define this connection, it will be obvious that our third period must, or presumably should, have linked to it a repository of the functions of the Papacy and the Delphic Oracle. Our leading idea comes from the argument we have just concluded above. We have shown that appeal to the Pope is the primary fact, and that reference to others is derivative. What, then, was the motive which prompted this wide-spread reverence for pontifical authority? On the face of it, it could have been nothing else than the prestige that religion had bestowed upon that authority—a prestige derivable, too, from an experience of her impartiality. In a word, such a position as the Pope occupied—head spiritual of all Christian nations, forbidden theoretically, by the ethic of the Church he led, to give way to any temporal considerations that would conflict with the justice of his decision—made his judgment for that period the standard of right and wrong. Justice, or at least international justice,—even to-day extremely lacking in definiteness—was non-existent. There was, in fact, no standard, no fixed body of custom, still less a code of laws, which should determine the legality, or otherwise, of any act that a State might commit. Hence, then, the obviously unjust—measured by the inherent sense of justice or injustice inbred in man—must be referred to the

one body which, or the one person who, as head of religion and head of learning, might authoritatively pronounce upon it. Indeed, from the point of view of fitness to act as an arbitral court, the papacy in the abstract, undoubtedly, represented justice—not in any formal modern sense, but in the sense of an interpretation of what seemed fit and proper according to the highest ideals of which the age was capable. Thus, too, we see the proper significance of the remarks of Case, in the "Arbiter," about the discretionary tendency being predominant in early periods of arbitration. It was inevitably so, in so far as the determination of the rights and wrongs of a case was to be decided by one man, or a group of men, whose powers, though limited, were not sharply defined by a scientific branch of study such as the modern corpus of International Law.

The Oracle of Delphi can be seen to be of much less importance from this point of view than the papacy. Why so, is easily inferred from Hellenic history. In the first place, in historical times it wielded no temporal power, had not the same vigorous and unquestioning faith to build upon; but in the early stages, when Amphictyonic tendencies were strong, "the god" can be seen to have occupied a position at least not contradictory to our hypothesis. Again as a weakening force against Delphi is to be placed the feeling of union, apart from religious ties—stronger than that which existed in the Middle Ages—that held together the Greek States. Nevertheless Apollo occupied, even in historical times, a position that indicates clearly how necessary, in earlier times, it must have been for a religious head to focus and direct the co-operative practices and operations of the Greek tribes.

In the case of the Roman Senate we have a variation. The prestige, here, is founded upon more material factors, the chief of which was unquestionably the

power of the sword. This disturbing influence in the conditions surrounding the position of the Patres is accompanied by an equivalent alteration in arbitration. In fact, in the fullest sense, it was non-existent in as much as a standard of impartiality was entirely awanting. Might supplanted right, and it was to the most powerful body that differences were taken. Religion in Greece and religion in the Middle Ages fostered arbitration by supplying an essential condition—a more or less impartial tribunal : the swords of the Romans killed it.

The bearing of this theory upon modern problems is by no means trivial. Though it will have to be alluded to further on, it may be remarked now that a codification of international law would, from our analogy, seem desirable; and also, which is more important, the establishment of a permanent court of arbitration. This, of course, as all the world knows, has become a fact, thus providing for the Europe of to-day what the Middle Ages possessed in the person of the Pope, a permanent tribunal before which difficulties can be stated, without the worry and irritation of agreeing upon an arbitrator having to be borne upon the outbreak of each and every quarrel. If the foregoing analysis has done no more than to give an historical argument for a permanent court, it has been worth tracing in detail.

We set out to determine three things. Two have been treated; it remains to investigate the third : What was the procedure of the arbitrations of the Middle Ages? Bearing in mind the characteristic, noted before, of all early references to an impartial court, viz., "the almost entire absence of procedure and definition," it would be futile to expect anything but wide rules of great elasticity and variety. From one point of view, this is the most notable feature of the Middle Age period. The procedure was quite

general in character : no species of litigation was outside its scope, all submitted themselves to its jurisdiction whatever their claim or quarrel. The members of the tribunal were empowered, by virtue of their office, to survey the whole ground, to make restrictions upon past or future actions, and to arrive at their award by whatever means commended itself to them : they could summon witnesses and judge according to that law which nearest fitted the case ; or, on the other hand, might promulgate their decision without inquiry—"de plano"—ruled only by their consciences. Apart from the necessary details prescribed in the original convention, viz., the names of the arbitrators and the time and place of their deliberations, as a rule only one further definitive, restrictive clause was added—the length of time permitted to elapse before the contracting nations should be provided with a solution of their differences. The scope of the arbitration can be inferred from the following formula frequently used in Mediaeval arbitral documents : "de et super universis et singulis causis, terris, castris, fortaliciis, grenitiis, limitibus, litibus, dissensionibus, discordiis displicentiis rancoribus, controversiis et odiis, inter ipsos hincinde undecunque vel quacumque causa seu occasione subortis et versatis hactenus."[1] Every word of this heading is chosen to emphasise the all-embracing nature of the powers granted to the arbitrators.

Another characteristic of mediaeval arbitrations is their finality : an appeal was not permitted and was never claimed. A further point which strengthens the decision, but which is indicative of somewhat primitive development, is the almost universal inclusion of a penal clause in the award. This was, without question, the result of states and

[1] Novacovitch, Mileta. "Les Compromis et les Arbitrages Internationals du xiie au xve siécle," p. 30, quoted. "With regard to and concerning all and every difficulty, lands, camps, forts, boundaries, quarrels, disputes, disagreements, rancours, discords, and hatreds between these powers whencesoever and from whatsoever cause they may have sprung and continue to be until this date."

monarchs considering themselves free from any moral obligation to fulfil their engagements. In 1475, when Louis XI. and Edward IV. were parties to an arbitration, a clause specified the sum of three million francs as a penalty for non-observance of the award. Many other instances are extant of a procedure which afforded certain guarantees and which was invested with certain judicial power.

There is, finally, the question of the Arbitral Clause, as it is named to-day, which has been considered before as it existed among the Greeks. In Mediaeval Europe it was by no means uncommon. Vattel is an authority for its use amongst the Swiss; it is praised by that great jurist. In 1516, for example, on the 29th of November, some time after the battle of Marignan, Francis I. and the Swiss Cantons came to an understanding which was known by the name of the "Pax Perpetua." The treaty contained the following clause—"Difficulties and disputes that may arise between the subjects of the King and the inhabitants of the Swiss Cantons shall be settled by the judgment of four men of standing, two of whom shall be named by each party; which four arbitrators shall hear, in an appointed place, the parties or their attorneys; and if they shall be divided in opinion, there shall be chosen from the neighbouring countries an unbiassed man of ability who shall join the arbitrators"—a quite modern expedient.[1]

There is a parallel passage from a Treaty of Alliance between Genoa and Venice. "If a difference should arise between the aforesaid cities, which cannot easily be settled by themselves, it shall be decided by the arbitration of the Sovereign Pontiff, and if one of the parties violates the Treaty, we agree that His Holiness shall excommunicate the offending city." The date of this treaty was 1238.[2]

[1] Histoire de l'arbitrage international permanent, par. B. Sax. Paris, 1903.

[2] Pandectes Françaises. word, arbitrage, No. xxi.

As a final instance the Treaty of Alliance signed in 1291 between Uri, Schwytz and Unterwald may be cited. It contained a scheme for obviating or solving any difficulties that should arise amongst the parties to the convention. The sanction specified was a co-operative war of all the other States upon the recalcitrant party.[1] This typical instance will serve to conclude the first part of this chapter. The closing portion will attempt a short account and classification of the more interesting cases of pacific councils and arbitrations during the Middle Ages.

III.

The classification will fall naturally into shape if we remember the origin of the arbitrations. To follow, step by step, the cases which were referred to Rome, will be to make a broad path through the period. The various side-walks may afterwards be traced and their connection with the main line indicated.

Though the records of the Papacy are full of instances where awards were given in matters of private interests and internal troubles, we shall review those only which are important from the point of view of international relations; there are a considerable number of them. To indicate the fact that those cases we cite bear a very slight proportion to the actual number recorded, it will perhaps suffice to mention that, in Italy alone, during one century—the XIIIth —no less than one hundred awards are known to have been rendered, each solving some acute cause of irritation between either the princes or inhabitants of various cities and States. A comparison will show this in a better light. In Italy alone, then, almost as many references to arbitration are to be found in the thirteenth century as make up the record of "wonderful triumphs" of arbitration in modern times, between all the countries of the world, from the signing of the Jay Treaty until to-day.

[1] B. Sax. op. cit.

It is, in a measure, useless, too, to cast aspersions upon the earlier body of instances as being concerned with very minor interests as compared with modern times, because, as is a commonplace in the mouths of our opponents, the actual importance of most of the difficulties solved in modern times is pitifully small. Hence, to resume, a comparison between the two periods is not only legitimate, but, in many respects, to the advantage of the earlier period, from the point of view of efficiency.

As pacificators of deep-rooted animosities between States in Europe, we hear of a long line of Popes. Alexander III., Honorius III., John XXII. and Gregory XI. all played the part, while Alexander VI., as is well known, settled one of those questions which are capable of convulsing a continent. The rather romantic incidents connected with the decision have earned it celebrity, while the actual nature of the award is seldom brought out. Indeed, even writers on arbitration seem to realise but faintly the significance of it. It was in the year 1493, then, that the Pope settled the fate of the globe by drawing his finger down it, making an imaginary line, from pole to pole, which was to stand for ever and a day as the division between Spanish and Portuguese empires. The attempt to uphold this nonchalant division of possessions in all probability worked for the ruin of Spain; that point, however, we need not discuss here. The award was embodied in the famous Golden Bull. We can in this connection quote an old friend—our war panegyrist of the Soirées de St. Pétersbourg, Joseph de Maîstre. "C'était," he writes, "un grand bonheur pour l'humanité que la puissance pontificale eut encore"—it was at this time on the decline—"assez de force pour obtenir ce grand consentement."[1] It sounds well, but we

[1] "It was very fortunate for humanity that the pontifical power had still sufficient influence to bring about this agreement."

shall see what Maîstre could not have seen. Revon always out-Herods Herod, and here we have a *bon-mot* of his: "Dès lors l'arbitrage jeta sur l'humanité une plus pure lumière et le droit commença de briller sans voiles"[1]—a particularly unwise sentence, not to mention the obvious hyperbole.

Indeed, as well-wishers to arbitration, we must be exceedingly delicate in our handling of this Golden Bull; it enfolds within itself many inherent weaknesses of arbitration as a piece of pacific machinery—weaknesses we must detect ourselves and not have pointed out to us by our friends the enemy. But our precise object in quoting Revon and Maîstre is to show their superficial investigation of their evidence. Can Revon, when he wrote the phrase "une plus *pure* lumière," have read this paragraph from the Bull, which is, in very truth, the basis upon which the award was given? After recounting the decision, the Bull goes on to say that among the "desiderabilia illud profecto potissimum existit ut fides catholica et Christiana Religio nostris praesertim temporibus exaltetur ac ubilibet amplietur et dilatetur, animorumque salus procuretur ac barbaricae nationes deprimantur et ad fidem ipsam reducantur."[2] "Barbaricae nationes deprimantur" is the heart of the whole proceeding from the point of view of the Papacy. Plunder and exploitation, of a particularly noxious species, formed the motive of acquiesence of the Spaniards and the Portuguese. The phrase repeated

[1] "From the moment arbitration cast upon humanity, a purer light and justice began to gleam without her veil."

[2] "Objects to be gained, one is of outstanding importance, viz., that the Catholic faith and Christian religion must be exalted especially in our time and expanded and spread abroad. The saving of souls must be prosecuted, barbarian nations must be overthrown and brought back to the real faith." Quoted by Valmigère, op. cit.

is the cloven hoof showing. Our criticism is not too strong : Mr. Robertson speaking of the conquests which followed the promulgation of this Bull says, "The misery and the butchery wrought from first to last are unimaginable. If the Spanish conquests of Mexico and Peru, with their Church-blessed policy of suppressing heathenism, be added to the record, the totality of evil is appalling; for the Spanish priest, Las Casas, estimated the total destruction of native life at twelve millions." This accursed union of soldier and priest, cemented by the gold of the tortured countries over the seas, has its conscious inception in this award of Alexander VI. We see it, the phraseology betrays it. And Revon talks of a "purer light" and of "le droit commençant de briller sans voiles."

Now to resume, note that this instance falls into line in a remarkable manner with the caution urged above with regard to arbitration, that it may at times be merely the prelude to future wars, or, as we may say, with no rhetorical exaggeration in this case, future murders. The award which has been hailed as a great pacific document actually commands a war to the knife upon whole races of men, should they hold fast to the faith of their fathers and spurn the teaching of the race that plundered, violated and murdered them, their wives and children. An objection may be urged that arbitration cannot be held responsible. Why not? In so far as the award cleared from the path insurmountable objects to the prosecution of its expressed object, it must be recognised in this instance as an instrument for evil. Perhaps a formal statement of the criticism of that shrewd thinker (pace Robertson), Captain Mahan, of the danger which this Golden Bull exhibits so clearly, will bring out my meaning. The sentence is quoted in full. "Of the beneficence of the practice of arbitration, of the wisdom of substituting it when possible for the appeal to

arms with all the misery therefrom resulting, there can be no doubt, but it will be expected that in its attempted development, the tendencies of the day, both good and bad, will make themselves felt. If, on the one hand, there is solid ground for rejoicing in the growing inclination to refer first to an impartial arbiter, if such can be found, when occasion for collision arises, there is, on the other hand, cause for serious reflection when this most humane impulse is seen to favour methods which shall, by compulsion, vitally impair the moral freedom and the consequent moral responsibility which are the distinguishing glory of the rational man and of the sovereign State."[1] The point is clear and we shall have to revert to it later.

To continue; it will be permissible to let this instance stand for the Pontifical class of arbitrations, and to pass on to consider the extension of the appeal to minor ecclesiastical offices. Bishops as arbitrators are common. The Treaty of Nonancourt is interesting and characteristic. It is the outcome of the award of three bishops who acted as arbitrators between Louis Le Jeune and Henry II. of England, of Auvergne, Chateauroux and other fiefs. The year 1276 has an instance of a composite court; two bishops and a soldier arbitrated upon a difference between the Kings of Hungary and Bohemia. We meet the monarchs of these two countries again as parties to an arbitration, the award of which contains this passage, full of modernity: "Examinavimus jura utriusque partis diligenti ac fideli persecutione tandem, favente Domino, aciem mentium nostrarum aequo libramine dirigentes, taliter arbitrandum duximus et pronunciando diffinimus inter Partes"[2]; then

[1] A. T. Mahan. "Lessons of the War with Spain." Chapter on Peace Conference.

[2] "We, with diligent and faithful inquiry have examined the rights of both parties, and finally, by the grace of God, keeping an impartial mind, have decided that the award shall stand thus."

follows the award. This was promulgated in the year 1335 to obviate a collision between Charles and John, kings of Hungary and Bohemia.

On the 9th of August 1475 all the points of disagreement between Louis XI. and Edward of England were put before an arbitral court of important character. The Archbishop of Paris and the Count of Dunois represented France. England sent the Archbishop of Canterbury and the Duke of Clarence. The result was satisfactory. An arbitration in which Cardinal Miolao was the chief person, is notable for an aphorism on war which appeared in the award, dated December 30th 1427, viz., " War is the work of the devil " —a sentiment the Quakers would re-echo. There is a curious and characteristic case in 1216. This centred round a difference between Dietrich, the Marquis of Meissen, and the inhabitants of Leipzig with their allies. The joint arbitrators, Albert, Archbishop of Magdeburg, and Eckard, Bishop of Mersburg, brought about a pacification.

Another important instance is that in which Boniface VIII. acted as arbitrator between Philippe le Bel and Edward III., king of England. The arbitral sentence is worded in a remarkable way and brings out well one of the phenomena with regard to arbitration that we commented upon above. The award bears the date June 27th 1298, and contains the following paragraph : " Super diversis articulis materia discordiae ac dissensionis exorta, tandem iidem Reges per speciales Nuntios et Procuratores ipsorum ad hoc ab eis mandatum habentes in nos Bonifacium . . . super reformanda pace et concordia inter ipsos Reges. . . . Super," it continues, " omnibus et singulis discordiis, guerris litibus quae fuerunt et . . . esse possunt inter ipsos Reges occasione quacunque . . . compromittere curaverunt . . . Pronuntiavimus hac vice ut inter

eosdem Reges fiat et sit perpetua et stabilis pax, etc., etc."[1]

The point to be noticed is the extravagant hopes that are often built upon the removal of a single, and often minor, point that may lead to collision, when permanent causes of irritation and war are still left in the back-ground, ready, when the fatality of things so disposes, to break through any such command for a stable and perpetual peace.

Other cases remain of papal and ecclesiastical awards upon important points, but they fall into the transitional period and will be mentioned later.

A derivative movement, as we have noted, tended to make kings and emperors the resort of those in difficulties, whenever a pacific solution seemed desirable or possible. It is to be expected that the Emperors of Germany would fill the greater portion of the canvas here, but such is far from being the case. The initial point to emphasise is that everything seems to have tended to place them in an exceptionally favourable position for selection as arbitrators. In the first place, as claimants to universal sovereignty—the fatal inheritance from the Roman Empire—they themselves tended, wherever possible, to strive for the office of pacificator. Again, as a general cause working towards the recognition of temporal sovereigns for this position, there are the root ideas of feudalism. This immense tendency, rather than actual consummation, dominates the Middle Ages. We cannot here trace its influence, but must content ourselves with recognising how easy is the transference of the idea of the nexus between the dependant and the lord from internal

[1] "Matter for discord and dissension upon several points having arisen, at length these kings referred to us, Boniface . . . through special messengers and procurators who bore their instructions, in order to establish peace and concord between the said kings. . . . We strove to draw up an arrangement concerning all and every quarrel, war and strife which had come to pass in previous years and which might break out in time to come. Our decision has been given that a perpetual and stable peace may be made and continue to be between the said kings."

relations to external, and the consequent normality of a reference of international differences to a commonly accepted lord, even where this acceptance of superiority involved no actual rights and duties between the suzerain and the dependent. This feeling derived from feudalism must be expected to show itself, and nowhere stronger, primâ facie, than in the Empire. Indeed, so strongly has this influence of feudal conceptions struck one writer on our subject, that he makes bold to sweep away all mediaeval instances of arbitration in the rather contemptuous classification of them as "mere exercise of the rights of feudal superiors." The present chapter as a whole shows the unfounded nature of such an opinion. However, the point to be elucidated is, why, when all seemed to favour the claims of the Emperors to hold an analogous position to the Papacy and the clergy, is it that we find so scanty an account of their activities?

The best solution of the difficulty is to be found in a comparison of the two sovereignties—the Empire and the Pontificate. One is temporal: the other, in theory, spiritual. That is the crux. However careful the Emperors might be—and we have evidence that they were scrupulously so—to keep out any suggestion of supremacy, the very claim to universal sovereignty was an obstacle to their being chosen as arbitrators. The jealous care with which a nation guards her independence—what great jurist was it who said: Sovereignty is to a nation what her virtue is to a woman?—made it unlikely that two obvious inferiors in point of strength and influence should refer to an arbitrator who avowedly claimed as his heritage supremacy over all nations. This explanation is, one may claim, quite sufficient, and is of cogency enough to account for the counteraction of the other two great positive influences, if one may so term them.

Before the Emperors realised the immense gain to their prestige when sovereign nations referred to them as arbitrators upon their differences, they followed a bad example of the Popes, and affixed the cachet of their authority upon the documents embodying the award. This practice could not fail to strike a blow at their pretensions to impartiality. Even the Papacy, the influence of which in the nature of things far outshone that of the Empire, was compelled to desist from such dangerous claims to temporal supremacy. An illustration of this is found in the arbitration of 1298 A.D. by Pope Boniface VIII., wherein he decided the rival claims of England and France. The document containing the agreement to refer to his arbitrament expressly states that he is to be chosen "tanquam privatam personam.[1] When such a condition is laid upon the selection of the Pope, it is not to be wondered at that the Head of the Empire, with his avowed claim to universal dominion, was not chosen as arbitrator by independent states.

The Emperor, Henry the Seventh, is known to have been of eminent peace-making character, while we have also some few instances of international reference to some of the others. One example must suffice. In 1378 the Emperor Charles the Fourth was asked to journey to Paris to decide an old controversy between France and Holland. Both countries recognised his prerogative, but scrupulously avoided any suggestion whatever which could imply a right of supreme jurisdiction belonging to him over the kings of Europe.

The Kings of France achieved great success and renown by their labours as arbitrators. We have already noticed the most famous—Louis IX. The Sire de Jonville writes of him, "The Burgundians and Lorraines perceiving the

[1] "As a private person." Dumont. Corp. Univ. Diplomatique, I. p. 308.

King's goodness and justice, were so loving and observant of him that they referred their differences to his arbitration. I have seen them often come to him for that purpose to Paris and other places where the king was resident."[1] His crusading zeal we have noted. He solved many great questions. His mediation between Henry III of England and his barons in 1263 falls outside our subject, but not so his equally well known award in the case between the Count of Luxembourg and the Count of Bar five years later. It is impossible to follow all the arbitrations of the kings. Those who are known to have been chosen for this purpose are Louis IX., Philip VI., Charles V., Charles VII. and Louis XI., while two of our English kings have acted the same part—Henry II. in the Middle Ages.

Before making a conclusion to this chapter, we have an instructive instance to analyse. The "Arbiter in Council" notes as remarkable, from the point of view of phraseology, the words of Philip of Valois, which are to be found in the heading of an award he rendered in the year 1334. These are "Nommé et eleu juge, tracteur et aimable compositeur entre hauts hommes, nos chiers amis." But the case in which the same monarch was the protagonist two years before, is, in many ways, more remarkable. There is in the records a letter from him, after he had accepted the position as arbitrator upon certain differences between Raoul Comte d'Eu, the Archbishop of Cologne, the Bishop of Liège, the Counts of Luxembourg, of Gueldres, of Juliers and of Namur on the one side, and John of Brabant on the other. In this letter there are notable passages, some of which it is desirable to quote, prior to commenting upon certain aspects of arbitration it illustrates. "Philippe par la Grâce de Dieu," it reads, "roy de France faisons sçavoir à tous que nous, regardans et considérans les grandes

[1] Quoted. Arbiter in Council.

guerres et discords qui étoient et pourroient plus grandes naître entre Raoul Comte d'Eu, l'archévéque de Cologne, l'évéque de Liège, les Comtes de Luxembourg, de Gueldres, de Juliers, de Namur d'une part, et Jean de Brabant d'autre part . . . desquelles guerres moult de perils, maux et esclandres pourraient venir et en suivre, nous désirant de tout nôtre coeur mettre à nostre pouvoir bonne foi et accord entre tous bons chétiens et specialement entre les dessus dicts . . .''[1]

'' Et pour,'' it has further on, ''ce les dict parties . . . établies personellement en notre présence de leur bon gré et leur volonté se sont compromis en nous comme arbitre . . . et nous ont donné . . . plein pouvoir de faire et mettre paix entre eux . . . et que les discordes, débatz, querelles et controverses dessus dicts nous les Parties ouyes amiablement, en leur demandes, diffenses et en leur raisons, etc. . . . .''[2]

This one instance alone would uphold any observer in predicating with truth that an analogy between the Middle Ages and modern times is not by any means fanciful. The passage beginning ''. . . moult de perils, maux . .'' is indicative of a spirit which can, it is true, be more than paralleled from modern or semi-modern writers, but which will serve to rectify the conventional view of the Middle

[1] '' We, Philip, by the Grace of God, king of France would make known to all that we, considering the great wars and discords that aforetime have been and may—still greater—arise in the future between Raoul Count of Eu, the Archbishop of Cologne, the Bishop of Liege, the Counts of Luxemburg, of Gueldres, of Juliers, and of Namur on the one side and John of Brabant on the other, . . . in consequence of which wars, many troubles, perils, and evil reports may ensue . . . desire with all our heart and all our power to establish good faith and accord between all good Christians and especially those mentioned above. . . .''

[2] '' Those parties have, of their own grace and free will, come before us in person and chosen us by agreement as arbitrator . . . and have given us full power of making and ensuring peace among them . . . and of their discords, disagreements, quarrels and controversies cited above, we have graciously heard the parties and their demands and their justifications . . .'' etc.

Ages as being devoid of that feeling of altruism and humanity which we are apt to take entirely to ourselves. One or two instances to strengthen this quotation. Charles VI., on the 28th March 1444, published an award in which the passage occurs, "Pour iceux rélever de toutes les misères et excès . . ."[1] This does not seem the product of an age when, as is often stated, war was, in the minds of the people, the normal state of international relationship, and peace the abnormal; when no conscious feeling of humanitarianism promoted a horror of war. But the Mediaeval records teem with passages which regard violence with much the same spirit as the Peace Societies. We have quoted one phrase of Cardinal Miolao from his arbitral sentence of December 30th, 1427. A passage in Latin at the end of that sentence will show that the claim made above is supported by the evidence. It is this: "Cum itaque humani generis inimicus . . . inter discordias et scandala seminaverit ex quibus Partes ipsae tandem ad guerram publicam devenerunt exindeque infinitae rapinae, incendia, vulnera, cedes, aliaque horrenda facinora succesSerunt , . ."[2]; the latter part is a most remarkable parallel to many of the Quaker tracts.

We must, however, for a moment revert to the letter of Philippe de Valois. The phrase "Nôtre bon-chrestiens" is significant, and bears out one of our positions with regard to arbitration. It was stated that the latter is a secondary organism, the existence of which is determined by several prior conditions. For instance, it can only arise among a group of States which either have failed to coalesce through the pretensions of any one of them to empire,

[1] "To relieve them of all their miseries and outrages."

[2] "And consequently since an enemy of the human race has sown discord and evil reports in consequence of which the Parties mentioned have come to a state of public war, whence have followed countless acts of violence, fire, wounds, slaughter, and other fearful deeds."

or are conscious of their inability to pretend to superiority over their neighbours. Then, when the consequent tendency sets in, and the affinities existent among the group are developed to a greater or less extent, arbitration may appear, but has no scope outside the group of States directly in question.

For example ,the phrase "bon-chrestiens" is a significant limitation of the extent to which Philippe of Valois' good intentions hold. The Saracen and the Turk are not explicitly excluded, because it was an inconceivable idea that they had any right to a place among the Christian nations. A parallel which only seems fanciful because of its exactitude may be drawn between the non-christian nations of the Middle Ages and the native races of the tropics to-day. The sword is the only arbitrament between the civilised nations of Europe and their subject races, should any revolt against European exactions break out.

The proof of this contention, with regard to mediaeval times, is not far to seek. We have read the gentle words of Philippe of Valois to the nations of Christendom in general, and the parties to the arbitration in particular. The spirit which prompts this benignity can be observed in a treaty dated the 27th August 1334—the one quoted by the "Arbiter." Philippe of Valois himself is the author of it, and he tells us that it was drawn up for the well-being of the country, and "ensemblement pour oster tous empêchements par les quels le sanct voyage d'outremer que nous avons empris pourroient estre retardé ou empesché."[1] If we remember, Louis IX., who struck the minds of many observers as the greatest pacificator of his age, but who was an obstinate crusader, and add Philippe of Valois, it would inevitably seem that the combination is both normal and natural: and,

[1] "To finally get rid of all hindrances by which the sacred expedition across the seas that we have undertaken, can be retarded or prevented."

in addition, that the causes which brought it about appear to be consistent with our estimate of arbitration.

Before finally leaving this period there is still a point or two that deserves attention. There is a declaration which emanated from the Polish delegates at the Congress of Breslau, which met in consequence of the measures adopted by the Council of Bâle to decide the claims of Casimir of Poland and Albert of Austria to the throne of Bohemia. The proposition set forth was that a diet of that country should have full powers to decide the point, and the reason given is the sympathy they entertained for a "nation of the same language with the Poles and for the good of Christianity." The dying words of Du Guesclin to his followers point the same way, "Souvenez vous que partout ou vous ferez la guerre, les ecclesiastiques, le pauvre peuple, les femmes et les enfants ne sont point vous ennemis; que vous ne portez les armes que pour les défendre et les protéger."[1]

The interesting work of Mileta Novacavitch, that has already been quoted, brings to light a Council of great importance that met during the Mediaeval period. Russia has commonly been thought a land of darkness out of which nothing good or inspiring can come, but in that country, far back in the centuries, a Conference was held, in no way an unfit predecessor of the Hague Assembly, convoked by the present Czar. The meeting is known by the name of the Congress of Loutsk, and the date of its convocation is 1429. It had a definite and pressing object in view. The spread of Turkish invasion had filled Europe with alarm, and the members of the Conference desired to formulate a scheme whereby the hated race should be barred further progress. A concurrent objective was the removal of all feeling of

[1] "Remember that everywhere, where you carry war, priests, and poor people, children and women are in no wise your enemies and that you only carry arms to defend them and protect them."

rivalry between the Slavs and the Germans, and the consolidation of the two nations. This programme, in the days of Pan-slavism and Pan-teutonism, may raise a smile, but the Mediaeval period was nothing if not optimistic. The Prince of Lithuania, Vitovt, was the man who took the initiative and became the ruling spirit of the Congress. The list of the members is remarkable. Vitovt himself, a sovereign prince, Jagellon, the King of Poland, and the Roman Emperor, Sigismond, all attended in person followed by large suites. The Pope, the Emperor of Byzance, the King of Denmark, the Teutonic Order and Gospodar of Moldavia were represented by delegates. As may be imagined, the Assembly is said to have been brilliant. The internal arrangement of the Congress is studded with points of interest. Its labours were commenced in January. It was divided into three sections—almost as the Hague Conference into Committees—each of the three kings, together with his Councillors, holding "séance à part" in the palace put at their disposal. The three sections were kept in touch one with another by the passing to and fro of ambassadors. It was unfortunately a complete failure, as might be inferred from its agenda. After sitting for two weeks, it dispersed, inasmuch as no common ground for agreement could be found. The various sections had private ambitions which militated against a successful completion of its labours. In many ways, however, it is of the greatest historical moment.

Finally, Case, in the "Arbiter," has brought to light "the most striking and remarkable of early appeals to International Justice," to use his own terms. Edward III. of England promulgated a manifesto at Westminster in the middle of the fourteenth century, directed against John of France. It is addressed to the Pope, the Emperor and all the princes, lords and people of Christendom in general.

He sets to rights various slanders upon foreign relations by swearing before God upon his kingly honour, and complains that people of that age wish to palliate their own faults by blasting the innocence of others, and he therefore believes it a duty he owes God and humanity to paint the King of France in his proper colours.

Such an appeal, to be intelligible, must have had an audience amongst whom a fairly regular standard of international justice obtained. It is certainly a remarkable document and is significant of that strong influence possessed by the moral sanction of public opinion.

The German student—for whom the author can in no way be a guide—will find much valuable evidence in the direction pointed out by Case, in the "Arbiter in Council," in his analysis of the remarkable phenomena of optional arbitration—"gewullkührte Austräge" and the "Recht der Austräge"—which are found in documents relating to imperial states. The first means in its essence the power of resorting to a neutral, in preference to a reference to the Emperor, which latter practice, we noted, was avoided. The second is the general term for the right of Germanic princes to resort to arbitration whenever they judged it fit to do so. The date, however, is much later than the other instances noted in this chapter.

We shall now pass on to a new period—the link between the Middle Ages and the modern period, which nominally begins with the conclusion of the Jay Treaty. It is both interesting and instructive.

CHAPTER VI.

The Recrudescence of War.

I.

The first part of our task at the opening of the modern period is to estimate the causes which were strong enough to throw the whole of Europe back again from that conciliatory and consciously peaceful attitude we investigated in the chapter just concluded, to a state of unmitigated hostility. Evidently no minor influence could have wrought the change that took place soon after the opening of the sixteenth century. This reversion, as we shall have to investigate later, was so complete that even to-day, some four hundred years later, we have only just recovered the ground lost. Therefore a simple explanation would not be sufficient to cover the case—it must have been a widespread concatenation of complex forces all bearing with cumulative effect against peaceful relations between the European States.

To get out of the way the minor causes which led to misunderstanding, let us note first that the common language of the Middle Ages began to fall into disuse. The Latin taught throughout Europe for use as the speech of the scholar, undoubtedly, was one of those ties which made for peace. Its effect was to lessen that ignorance of the foreigner and his country which acts in all cases of international friction as a subterranean—so to speak—and therefore dangerous agent in increasing the irritation. Now this clerical tongue fell into disuse, and with its discontinuance was eliminated one element that led to friendly feeling

and willingness to compromise. The dialects of the vulgar expanded into the languages of modern Europe and even educated people were no longer able, through a single medium, to participate in a common intellectual life.

This cause working against peace may be called a negative one. There is another influence of the same class. We noted that, at the beginning of our last period, an equilibrium as regards strength and wealth had, as to-day, established itself among the European nations, which, however, had in broad outline assumed their modern form. Now, it is to be observed that during that period the ruling and exploiting classes had begun to concentrate their power, to eliminate private war and to consolidate their disunited baronies and villages into nations in the fullest sense. This process necessarily accentuated in an accumulative way the innate superiority of one nation over another. It is evident that while the king "lives on his own" and has to unite, as instruments for a national movement, a turbulent body of barons, a distinct superiority between one nation and another sufficient to give rise to actual wars of aggrandisement does not and cannot emerge. But, whenever the process of centralisation and unification set in, nature favoured one monarch, so to speak, with an increasing return. The sooner he eliminated private war, the sooner he gave the growing burghs autonomy and cut their exclusive tendencies, the quicker his own wealth and power grew, and these in turn reacted as a stimulant upon the nation. This is precisely what happened in Europe. Each monarch in varying degrees began to feel the electrifying influence of growing power and was able, the more he could rely upon a united people at his back, to give rein to ambitions which were fostered by the conditions of the time.

Now, to appreciate the exact position this growth of national power takes in our estimate of war and arbitration,

it must be remembered that we insisted, as a condition to the emergence of the latter, that no nation among the group considered should either be powerful enough, or —what would produce the same result—should think itself powerful enough to cut the knot, in all cases of divergent interests, with the sword. This, we saw, was the position in the twelfth to fifteenth centuries, though the tendencies towards the disturbance of this equilibrium were slowly but surely making themselves felt in the last two centuries of that period. Added to this there was the conception, which was not yet questioned, of universal sovereignty as the natural and inevitable goal of development. It only required a strong arm to bring it to a consummation. It was the prize thrown down in the arena for any to pick up provided they could defend it by blood and treasure. Such a notion could not fail to be inimical to pacific relations, once the impotency induced by equality was removed. It will be our task to observe how more than one nation has grasped at the prize, and how these efforts have uniformly failed. The harvest reaped in all cases was but sorrow and tears : overleaping ambition contrived its own destruction. It is interesting, at this point, to realise the fact that, had any one of these succeeded, Europe would in great measure have followed its present course in social, industrial, and intellectual development; but, from our point of view, it would have left the path which leads to federation of sovereign units by becoming an Empire. A speculation as to its possibility would be futile, but the mere recognition of the alternative evolution would seem to point to some truth in the opinion that, had Napoleon conquered Russia and could he have turned a united Europe against England and worsted her, the United States of Europe would have become a fact and arbitration would have had but little part to play in the

history of the last century. All such attempts, however, failed.

The first great positive disruptive influence was the discoveries of the navigators. It is scarcely possible to exaggerate the immense food for contention and blood-thirsty struggle that such discoveries afforded. The legacy that they left behind has torn Europe from end to end. The problem of to-day is the control of the tropics and other lands in the possession of inefficient peoples. The position, too, has been aggravated by the incoming of new powers into the field of colonial empire. The United States and Japan, Germany and Belgium, all are in quest of new territories for the purpose of extending national power. It was the year 1492 that saw the rise of the curtain on this act of the world's drama. By the opening of Elizabeth's reign the struggle was well begun. It is well known how that Queen lent her navy out to London Adventurers to try to attract to England some of the large gains that accrued to Europe through the exploitation of the new lands. Here it is of importance to observe that, undoubtedly, much of the good and evil of modern times is rooted in this frantic scramble for stolen treasure and ruined lands. Economic history demonstrates in no uncertain way that the pre-eminent position of Britain to-day, as the first manufacturing nation in the world, is, in a great measure, due to Elizabethan piracy. The income of the country was exceedingly modest, and when voyages could be successfully carried out with a reward of anything from 100 per cent to 4100 per cent.—the estimated return on Drake's voyage round the world—the new blood, in the shape of capital, that thus revivified the country, made it an object to be pursued by kings and queens in order to secure for their country as large a share as possible in it.[1] The lax morality induced

[1] The specie brought by Drake was more in value than the whole foreign trade of the country. Imagine the effect of the introduction in England of gold to the value of one year's exports and imports—a thousand millions.

by these piratical expeditions was directly a contributory cause to the beginning of the African Slave Trade by Hawkins in 1554. America's great problem—the treatment of her coloured people—is the outcome of Elizabethan licence and avarice.

There remains to be reckoned the result of the conquests of Pizarro and kindred adventurers in the West. The atrocities were frightful, exceeding anything that the ages of antiquity can furnish. It is not our part here to enter fully into the complete aspect that this imperialism bears, but simply to emphasise its importance in breaking up beyond recall the federative spirit in Europe. To obviate any sentimentalism, however, it is necessary to deprecate any futile rhetoric against war, in the light of the stupendous expenditure of men and treasure, in this sanguinary conquest and partition of over-sea territory. The discovery of Columbus was the announcement to the world that a new problem waited to be solved. No conceivable machinery that was at the hand of sixteenth century Europe could have been put into operation to effect, say, the present distribution of tropical lands to the nations, except the one that was actually used. Again, it is useless, indeed absurd, to say that the work was not worth doing—that would be both a negation of progress and a ridiculous protest against what, *nolens volens*, is seen to have been the inexorable outcome of the causes at work. The solution briefly is this: The sword was, taking into account man's nature and the age, the only possible instrument. The present United States of America is a concrete proof that the work of dispossessing the native races was the demand of evolution. Hence, then, the wars, viewed broadly, being inevitable, must be accepted as useful. If not, nothing remains for us to adopt as our mental attitude towards progress but a despairing pessimism. That such horrors have yielded on the balance no surplus good is the conclusion of despair.

But we are by no means finished with the tendencies hostile to peace. Indeed, the greatest positive disruptive influence of all has to be related. It was that complex body of causes and effects summed up in the word Reformation. The position of Europe after this religious phenomenon had well developed was as Valmigere puts it "Deux religions en face, l'une et l'autre énémies."[1] It needs no emphasising that that enmity which has its spring in religious antagonism and intolerance, is of the most virulent kind. It is, indeed, the converse of the proposition that a common religion is the most powerful factor of all towards peace.

In 1517 Luther nailed his Theses to the Wittenburg Church door, challenging on orthodox lines the abuse of indulgences, an event which is even worthy of Homer's lines—

> " ἦ μυρί' Ἀχαιοῖς ἄλγε' ἔθηκεν,
> πολλὰς δ' ἰφθίμους ψυχὰς Ἄϊδι προΐαψεν
> ἡρώων, αὐτοὺς δὲ ἑλώρια τεῦχε κύνεσσιν
> οἰωνοῖσί τε πᾶσι—Διὸς δ' ἐτελείετο βουλή."[2]

Religious bigotry was soon abroad and the Wars of the Reformation began. The first batch of brave souls to be sacrificed was one hundred thousand of the peasantry of Swabia and Franconia in the early part of the sixteenth century. This frightful massacre, however, was only an earnest of what was to come. Germany was to prove the arena for the acutest crises of the coming century: consequently, to indicate the character of the wars of this period we shall briefly follow out the course of Protestantism in Germany.

Charles V. at the Diet of Spires in 1526 called for repressive measures against Lutheranism. This being unsuccessful, 1530 saw the deliberations of the famous Diet

[1] Two religions, face to face, both deadly enemies.
[2] Iliad, initio.

of Augsburg. The struggle was now bound to come, but it is notable that danger from without—the Turkish Invasion of Austria—delayed the actual breach : quite a significant fact. Thereafter coercive measures by the Emperor made war inevitable. The Peace of Augsburg was concluded in 1555, but the end was not yet at hand. A militant union was formed in 1608 by considerable Lutherans and Calvinists. Bohemia, however, was the touch-hole, so to speak. Matthias and Ferdinand, successive monarchs, were at grips with their protestant nobles. Ferdinand's election to the Imperial Throne was the signal for his deposition. The Elector Palatine accepted the vacant dignity. Maximilian and Tilly snuffed out this movement, almost in its beginning. The result was the washing out of Protestantism in Bohemia with torrents of blood. However, Mansfeld, Ferdinand's general, began to recruit the idle soldiers of Germany and supported himself and his army by plunder. This was the pass to which Europe had come when James of England appealed, on behalf of the Elector Palatine, to Gustavus Adolphus. Wallenstein meantime held the game. The Swedish monarch soon gained command, but Lützen in 1632 was fuel to the imbroglio rather than a means of diminishing it. France, feeling her strength and hating Austria and Spain, who still bolstered up the Empire, stepped in. This inconceivable strife was not concluded till the Peace of Westphalia in 1648. It had been an internecine struggle of extraordinary length, and, as a writer remarks, " the English Civil War passed through nearly its whole course, a mere episode in comparison."

The result was the complete exhaustion of the German world. The condition of Central Europe has been a commonplace in Peace literature, but a new and eloquent description is worth quoting. " The armies on both sides had been to the common people as the monstrous dragons

of fable, bestial devourers, dealing ruin to friend and foe alike. Every sack of a city was a new triumph of cruelty and wickedness; tortures were inflicted by the mercenaries which almost redeemed the name of the Inquisition; and, as of old in the Ireland of Elizabeth's day, peasants were found dead with grass in their mouths. According to some calculations, half of the entire population of Germany was gone: and it is certain that in many districts numbers and wealth, man and beast, had been reduced in a much greater proportion, whole provinces being denuded of live stock and whole towns going to ruin. German civilisation had been thrown back a full hundred years, morally and materially. No such procession of brutality and vice as followed the armies of Tilly and Wallenstein had been seen since the first Crusade; and the generation which had seen them and had been able to survive them was itself grown callous. Capacity, culture and conduct had alike fallen below the levels of a century before."[1]

The outcome of this diabolical chaos was the definition of the boundaries of the two creeds. That is all, and this modicum of good out of a world of evil must lead to reflection. Is this not the beginning of the decadence of war as an instrument or rather the instrument of social progress? This is a point to be settled hereafter.

Henceforward, however, note that the religious war is on the point of extinction. Now and again we come across an instance which appears to be a recrudescence, though the real cause turns out to be economic. Indeed the fact should be observed that the purely religious war has still to be fought. Even the Crusades were in no little degree prompted by the fabulous tales of immense treasures in the kingdoms of the east. War, in fact, wherever encountered, seems constantly to conform to the nature of an enterprise—no profit, no war.

[1] J. M. Robertson. "History of Christianity."

II.

The wars which followed the Peace of Westphalia, until the French Revolution, with one huge explosion immediately thereafter, all fall into one category. It will be remembered that the fact was insisted upon that pacific machinery to attain to a federation or quasi-federation never makes its appearance until each one of the group of States concerned has attempted, as opportunity served, to found an Empire. Rome, it was shown above, was able to cut short the road to extended area of unified territory by means of her legions. Athens, Thebes, Sparta, and Corinth all failed one after another. The other tendency then set in and would, doubtless, have resulted in complete federation of the Greek world had not Roman domination swamped it in its early stages.

Equally with the States of Greece we saw that the nations of the early Middle Ages were unable to dream of ever aspiring to universal domination, though tradition preserved the ideal. The resources of each State were undeveloped. The differences which would emerge later were all, at present, latent. Consequently, despite incessant warfare of a predatory type, strong ties of union were recognised and cherished : whence the extraordinary pacific temper, that we analysed above, made itself felt.

Even without the XVIth century, it was inevitable that, as the development of industry and commerce differentiated more and more between the wealth of one State and another, there must have arisen wars of conquest. A complication, however, was added by the Reformation and the discovery of the New World. The fatal results of these two events to the peace of Europe we have just traced. That terrible Hundred Years' War was the safety valve for the accumulated passion and greed derived from this double stimulus. The Peace of Westphalia, however, may be

regarded as the end of the first clash of the infuriated and enraged peoples. It is here that we can put down our finger and say thus far and but little further extend the wars directly traceable to the great upheaval of the Reformation. Henceforward a new motive must be adduced.

While 1648 was the end of the wars of religious bigotry, it was the beginning of that class of war we, from analogy and deduction, expect to find—conquest. The States of Europe now began to vary greatly, both in military effectiveness and material wealth—chiefly owing to the great extension of industrial processes and the expansion of commercial enterprise. The relation between war and industry must occupy us later, but meantime it is to be noticed that it was partly owing to the latter that Europe was the victim of one ambitious monarch after another.

England had, in a modified form, anticipated the tendency by some centuries. The conquest of France by Henry V. was the height to which England attained, and, after a century of Empire, she was compelled to loose her hold. Thus early, we, in this country, were taught the lesson that dreams of continental dominion for our own country were at once fallacious and ruinous. Our experience was bought at the price of much demoralisation, infamy, and finally, civil strife.

Spain also anticipated the movement to a certain extent. Her exploited dominion in America—Peru and Mexico; and Europe—Italy and the Netherlands—

> "Tunis and Oran and the Phillipines
> And all the fair spice-islands of the East."

gave her the means to attempt wide, continental Empire. Her military spirit was sharpened by the passion drawn from fierce religious bigotry; she cloaked her territorial

ambitions under the title of Defender of the Faith and embarked upon a career of expansion.

The Netherlands, however, was an open wound in her flank. The virile energy and unscrupulous tactics of England and the tortuous diplomacy of Elizabeth checked her once and for all. "Ambition had o'erleaped itself" in the stronghold of Catholicism. Spain is to-day on the lowest rung of status among the nations of the world, and forms an object-lesson to the world of the self-destructive effect of unrighteous aggression.

England, despite the lesson of the earlier centuries, would have attempted continental expansion under Cromwell a second time. There are unmistakable signs in his foreign policy that point to such an ambition. Fortunately dynastic quarrels and internal difficulties prevented his spirit infecting the nation, and Europe was left to be entrapped by France in the net of territorial expansion.

In a few years France augmented her standing army from eighty thousand to close upon half a million. Louis XIV. was the guiding spirit. The result was ruinous, and yet another nation learned the lesson that Europe can always maintain her independence against a single nation, however great the supply of soldiers, however great the material resources of that nation.

These huge conflicts had to be fought, before the reaction from the cruel enmity that followed the Reformation and the New Discoveries, could be felt. Those nations, which tended to rise above and dominate all others, must be met with coalitions and leagues until an equilibrium could be reached. The eighteenth century was spent in trying to realise this balance of power. The other great disturbing influence of that century was the lack of territorial unity among the European States. Each one was vulnerable at so many points that attempts to find real frontiers were

inevitable. Frederick's great leap upon Silesia will serve to illustrate the argument. To permit Austria to hold the fastnesses behind Neisse and the plain of Silesia, where an army could be mobilised, was an immense danger to Prussia. Underneath Frederick's disregard for the morality of the action, we can see the earnest desire to secure his frontiers by placing them on natural boundaries, and thereby to reduce the dangers of outside aggression. He was content to pay the price of the dark days which followed in order to secure to Prussia something approaching territorial unity.

Such wars as these touched vital interests—in most cases those of all Europe. The consequence is that all the wars of this century have an international character. The War of the Spanish Succession (1701-1713), the War of the Austrian Succession (1740-1748), the Seven Years' War of Frederick the Great (1756-1763), the Wars of the French Revolution, all have the character of Pan-European struggles and had to be settled by international treaties of peace, such as the Peace of Utrecht and Rastadt (1713 and 1714), the Peace of Aix la Chapelle (1748), the Treaties of Paris and Hubertusburg (1763), and the treaties of Basle (1795), Campo Formio (1797), Lunéville (1801), Amiens (1802), Pressburg (1805), Tilsit (1807), Vienna (1809), and the Great Congress of Vienna in 1814-1815.

The result of all these wars and treaties was, in a measure, the attainment by all the countries of Europe of territorial compactness. The work had to be done and the price had to be paid. Blood and treasure of inconceivable quantities were spent during these hundred and fifteen years, and even then storm centres were left.

Italy and Germany had still to find unity—their efforts we must leave till later—while the near East was still unorganised upon a proper footing.

Meanwhile we must retrace our steps to catch up another thread. The study of war from the sociological point of view must be continued and brought into harmony with the wars of the XVIth and XVIIth centuries.

III.

A. The Progress of Destructive Invention and its Results.

Physical courage, in the earliest stages, is the predominant factor in success in war. Intelligence, later, when discipline and ordered movements are superior to disorderly mobs even of greater numbers, assumes the first place. The process does not stop here. Superiority in armament—due to the exercise of intelligence, it is true—assumes a place of overwhelming importance.

The origin of this last tendency was the invention of fire-arms—one of the most pregnant discoveries the world has known. War, in its early stages, was almost independent of capital. Before the invention of powder, too, the most backward peoples could make arms which were little inferior to those of the most advanced nations. The making of fire-arms, however, presupposes a great development of industrial processes,[1] while large advances of capital are also necessary. Rifles and machine guns cost many times more than lances and bows and arrows. The supply of powder, in addition, requires great material resources on the part of the State. In our day the progess in this direction has been still more decisive. The destructiveness of the new "material" has been increased to an enormous degree and is still progressing. Scientific attainments of the very highest type have to be devoted to the invention of new guns and ships, while huge amounts of capital are absorbed in arming the nations. All

[1] As the struggle of Elizabethan England to arm itself shows.

this has modified greatly the conditions of warfare—all to the advantage of civilised peoples. The determining elements of military success are no longer physical strength and brute courage. The supremacy lies with the civilised races. They alone have the knowledge, the capital, and the moral courage, which, to-day, alone suffice to conquer in battle.

This differentiation between the civilised and the non-civilised peoples through the exercise of intelligence and material resources has resulted in the permanent superiority of those races alone, which possess or can assimilate these elements of Western Civilisation. Consequently, these races divide most of the world between them. Africa and America, Asia and Oceania, have, for the most part, been gradually parcelled out among the nations who possess First-class Battleships and Maxim guns. The ease with which such nations extend their conquests, crush out rebellions, and subdue even the most martial peoples, shows that the peril of invasion has altogether disappeared. China remains: the Yellow Peril, however, seems a chimera and we neglect it. Civilisation has attained a position it never held before: it is secure against barbarity.

What did we say was the mission of war? To purchase security *vi et armis*. Security has been attained. Civilisation is no longer in danger. War, then, seems within sight of its end. Security, however, can only be complete when huge clashing interests and rival ambitions have been eliminated. Could a reconciliation of these be arrived at, then war would indeed have lost its utility and become a thing of the past.

Fortunately, in its progress, war has engendered a parallel progression, which more and more trespasses upon its preserves, and, it is to be hoped, will finally dispossess it altogether. It is to this that we must now turn our attention.

B. Industrial Progress—its Significance and Results.

To obtain a proper perspective, it is necessary to recapitulate for a moment. The survival of the fittest, in its amended form, is the law under which all life must exist. In the earliest stages this law of strife, of competition, forces man into war with man and the great beasts. The complementary law of selection finally evolves a system of co-operation; composite groups now fight out the struggle for subsistence.

The most powerful of these communities—*i.e.*, those which husband their forces best, develope their physical qualities and give way least to excess—survive this test of war, much to the advantage of the species. The survival has been assured to those tribes which show superiority in physical courage and strength. The consequent progress is determined by intellect; the centre of gravity changes, and, upon the invention of fire-arms, a series of advances ensues which completely alters the whole conditions.

Intellect not only served to augment the destructive powers of engines of war, but also to invent the steam engine and the cotton jenny. Industrial processes come into being, but their existence and development are subordinate to the condition of security—*i.e.*, the protection of one's life, tools and products. Whenever security is ill-assured, when the weak are constantly exposed to confiscation of the products of their labour by the strong, the effort required to produce is not forthcoming, since the immediate motive at the root of all industrial expansion is profit. But security must be produced. There must logically, then, be some inducement to the strong to undertake the task, and endure the dangers of providing peace.

This inducement is the same one—profit. The strong soon appreciate the fact that more is to be gained in this way than by despoiling the weak of their subsistence. Hence the conquest and exploitation of a conquered people.

Now, as time goes on, the governing minority begin to see that it would be to their greater advantage not to confiscate altogether the surplus product—to use a Marxian phrase. The development of industry requires capital, while taxes and benevolences have the effect of destroying the resources of the country. Hence, we get, unconsciously no doubt, the gradual change in the status of the feudal serf. He is paid wages instead of being supported; he pays rent instead of labour for his land. The gradual growth of capital and the enlargement of free contract is a direct and immediate consequence of this commutation.

The members of the exploiting minority, undoubtedly, would have abused their power, and kept the populations upon the starvation-line, had not competition in the form of war acted as the saviour again. The clash of nations led the ruling classes to look more and more to the augmentation of the resources of the state. This reorganisation penetrated all branches of social activity—military, political, economic. That this is a true account of the development of many industrial processes can be seen at a glance from a review of English Economic History. The Statutes of Richard II. and the financial history of Queen Elizabeth's reign furnish innumerable proofs.

We have seen how the competition of war has attained security, and also its second object, the progress of the human species. The wars of the past have been an instrument for progress. No other means of selection was possible, except the actual test of life-and-death strife. Granting the first object to be all but attained, the question may fitly be asked whether the second element in war—its value

as a test of national efficiency—will not suffice to secure its continuance and justify its existence. Such articles as, "War as a test of National Value," which appeared recently in one of the reviews, such a work as Proudhon's, "La Guerre et la Paix," and even Hegel's well-known views on war, all find their support upon this theory. This is the kernel of the "Divinity of War" theory, as far as there is any kernel at all, and, more important, it colors the views of the working man and the artisan, who have a smattering of biological formulas.

The answer to the question would undoubtedly be in the affirmative, had not war, in the course of its long labours in the fulfilment of its end, engendered another form of competition, every bit as efficient as war, and much less wasteful of lives and wealth. It is unnecessary here to analyse industrial competition. It will be admitted that the development of great markets, the adjustment of complicated factors of supply and demand, the constant requirements of industry for better and more skilful workmen, together form a test of national efficiency which war itself cannot claim. Is the industrial supremacy of one nation over another not a better test than war, from the point of view of racial supremacy? Indeed, the opposite proposition, that war is actually to-day a real determinant of the actual qualities of a people cannot be upheld for a moment. Could it be honestly laid down that France as a nation, from the point of view of fitness to survive, falls short of Germany, though almost bled white by her in 1870? Industry, in fact, forms a sufficient stimulant to the best energies of the peoples of the world, and the law of selection seems to have chosen it as the medium for its decrees.

Thus, then, war has completed its task. It has provided that security, which was indispensable for the rise of a new

form of competition that should supplant that of war. Hence, the recourse to arms seems to be an outworn method of settling international differences. It should disappear. In all probability it will, but not in the near future. The conflict of interests, and especially of commercial interests, seems too acute to be solved without strife, and much strife. Again, the domination of the Western World is not so absolute, nor its own internal harmony so remarkable, as to preclude the call to arms in the coming centuries.

But this the past can show us: war has become an obsolete function, as far as its being the test of national value is concerned. Industry will far better, and with less suffering, make manifest the inefficient and those who are unable to bear the brunt of progress.

CHAPTER VII.

Arbitration between the second and third Periods.

This chapter must be very brief. The fifteenth century, as we have seen, was the period of the elimination of pacific tendencies of all kinds. The passions of greed and religious bigotry blinded the peoples of Europe. Hate and hostility supplanted amity and brotherhood. Hence arbitration had to go to the wall. We have noted before this weakness of arbitral methods: they have no special strength of their own which will ensure their continued existence: they are entirely dependent upon external conditions, which we have been at pains to point out.

Our review of the period following the Middle Ages has proved to us that these conditions were entirely awanting. Hence, no surprise will be felt at the absence of many instances of the adoption of arbitral methods by warring sovereigns.

Mere force of habit and recollection of the use of any instrument may lead to its occasional adoption when other means are the rule. Into this category fall these 16th to 18th century instances. They are, to use a semi-technical term, "survivals" upon which no stress may be laid.

We have pointed out before the peculiar position of the Papacy with regard to arbitration. Opposition to the Pontifical claims sprang up and they were abandoned voluntarily in 1598. Merignhac tells us that in that year the Treaty of Vervins was signed, which submitted to the arbitration of the reigning Pope, the pretensions of the King of France, Henri III., and Charles Emmanuel, Duke of

Savoy, to the Marquisate of Saluces. Clement VIII., worn out by the continued plots of Charles Emmanuel, declared that he would resign his mission.

In the seventeenth century we find one solitary instance of Pontifical arbitration. Gregory XV. was the arbitrator upon the disputes, raging round the forts of the "Vateline." The eighteenth century is equally barren. Pope Clement XI. gave the casting vote as Umpire between Louis XIV. and Leopold I., who were appointed arbitrators by Article 8 of the Treaty of Ryswick.

The next instance of the Pope as arbitrator falls well within the modern period.

There was a rather interesting instance in 1655. On October 23rd of that year, the Treaty of Westminster re-established friendly relations between France and England, at that date a republic. One of the Articles—number 24 — stipulated, probably under pressure by Cromwell, that the Republic of Hamburg should act as arbitrator between the two countries, and decide the question of damages on both sides from the year 1640.[1]

In 1570 there is a case related where Jean Bagot, councillor of the Parliament of Dijon, was chosen as arbitrator between the King of Spain and Switzerland, in reference to a man called Franche Comté.

To conclude our meagre list, we may cite, in 1665, the arbitration of the Grand Council of Malines. The controversy was between Frederick William, Elector of Brandenburg, and the States General, concerning the

[1] The importance of the Hanse towns to the student of arbitration should not be overlooked. The Hanse was formed in 1210 between Lübeck and Hamburg. In 1360 it consisted of fifty-two towns, and in the fourteenth century had grown to be a union of eighty cities of the Baltic, the Rhine and Flanders. All differences between its members from the year 1418 were adjusted by means of arbitration. In 1289 the league was chosen arbitrator, by the Treaty of Calmar, to settle all differences that should arise between the ancient adversaries, Norway and Denmark. Cf. Dreyfus, op. cit. p. 30.

obligation of a debt, called the debt of Hofyser. After the Peace of Nimeguen, the States General of the United Provinces filled the rôle of arbitrator between France and Spain, about some fortified places and auxiliary points.

That exhausts our instances for nearly four centuries. The reasons we have pointed out. The two chief destructive influences were the Reformation and the Discovery of the New World. Klüber remarks that, "to judge by manifestoes and proclamations, no sovereign ever went to war, without having made every effort to prevent it." This is in a measure true, but the pent-up hostility of many generations forced their hands. To engender pacific feeling takes long years and many wars.

Merignhac quotes Rousseau's explanation, which, though inadequate, is a partial truth: "Could they submit themselves," says Jean Jacques, "to a tribunal of men who boasted that their power was founded exclusively on the sword, and who bowed down to God only because he is in heaven?"

CHAPTER VIII.

The Third Great Age of Arbitration: Some aspects of the General Movement in favour of Peace and Arbitration.

I.

The Origin and Growth of Peace Societies.

The earliest recorded popular movement against the practice of war and for the establishment of a permanent peace comes from the United States. The first name is that of a Quaker, and this sect—the mental attitude of which, Revon appropriately compares to that of the Judaic prophets—is, for a long time, associated intimately with the movement. The agitation, which has grown in the favourable soil of western civilisation to such an enormous extent, soon overflowed the narrow limits of Quakerism, but it is, undoubtedly, to their narrow, and therefore powerful, interpretation of the teaching of Christ that we owe the present power and influence of the Peace Societies.

In 1814 there appeared in America a modest pamphlet with a pompous title. It was anonymous, but the author undoubtedly was a Quaker doctor named Noah Worcester. The title of the work was, "A Solemn Review of the Custom of War." It was evidently the outcome of a state of antipathy to war, existent among a number of sectaries in New York.

The last echoes of the guns at Waterloo had scarcely died away when the first Peace Society was born. August 1815 was the date, and the body was exclusively composed of Quakers.

It is an indication of the far-reaching effects of the long European struggle, called by Lord Russell "the most bloody hostilities that ever mangled the face of Europe," that, within a few months of Worcester's pamphlet, four distinct organisations arose. Ohio and Massachussetts in America followed the lead of New York, and an article in an English paper, "The Philanthropist," preluded the formation of the first English Peace Society, constituted on 11th June 1826. It is rarely we have to quarrel with Dr. Evans, but where is the necessity to refer the above facts, so insistently and misleadingly, to "Divine Suggestion"? Thus: "This Divine origin of the movement is the more distinctly seen as it is studied in detail and *the fact transpires*, that those who were originating the movement in various districts of the same land, were ignorant of what *each other were attempting* and fondly fancied that their own efforts were the first of the kind."[1] It is in the interests of the movement, becoming more and more widespread with the advancing years, that many protests have been directed against this ultra-religious basis of Anglo-American Peace Societies. If the advance of peace is to be an object dear to many peoples in far distant lands, the basis of the agitation for its promotion must be widened. It is extraordinary that the leader and authority upon these matters in England should claim this peace-making as specially the work of God. How can this claim be reconciled with the fact, that almost all the valuable and most temperate literature on behalf of the cause has been produced in countries where an unorthodox and almost agnostic mental attitude is predominant, and the fact that the Socialists of the Continent, who are notoriously out of sympathy with Christianity, are strenuous in their championship of the cause? It is to be hoped that the dominant note in the

[1] Herald of Peace. Article quoted above. (The Italics are his own).

Peace Societies of England and America will be changed to one more in harmony with the complexity of the problem and the needs of the age.

To resume—the movement extended with extreme rapidity. Before the organisation of the central body—"The National Peace Society,"—in 1828, the number of separate divisions was over fifty. In England, a similar rapid development took place, and even the Colonies were infected. France was not far behind, and, in Paris, in 1821, the "Société de la morale chrétienne" was founded.

The principal object of all these societies was to print and distribute tracts and addresses, pointing out that war is antagonistic to the spirit of Christianity and the true interests of humanity, and showing how best to establish and maintain a permanent and universal peace upon a basis of Christian principle. The London Group had, in their first year, an income of £212, which served to print and scatter forty-six thousand tracts and addresses. The next year, one hundred thousand were issued, and many of these were translated and circulated upon the continent. The Peace Society of Massachusetts was still more vigorous in this department. They flooded France, Russia, India, and the Sandwich Islands, with pacific addresses, all couched in similar terms.

France was the birth-place of the publications specially issued for the propagation of peace. "Les Archives de la Société de la Paix à Genève" was the grandiose title of the first, which preceded the English "Herald of Peace" by a few years. The latter, transformed recently, has had—with a small gap in 1836[1]—a continuous existence.

The first élan seemed now to be exhausted, and a period of inaction ensued. It was during this seed-time that the change noted by Potonié-Pierre took place. "Au début,"

[1] British Museum Catalogue.

he writes, "le mouvement pacifique eut un caractère essentiellement réligieux, caractère qu'il a gardé du reste en Angleterre et en Amérique : ce n'est qu'en Europe que des éléments nouveaux, apportés par les libéraux, les libres-penseurs, les socialistes, étendirent la sphère d'action de l'agitation."[1] When the movement emerged again, just before the middle of the century, the continental societies began to have independent life. Consequently in Europe the agitation has continually receded from the exclusively religious significance it had at first; even in America and England the divergence is marked, but, to-day, on the continent, the connection even is not visible.

The necessity of the movement was seen to be publicity. It had only been able to reach a very limited audience, and the desire to enlarge its boundaries led to the holding, in 1843, of a Congress—the first of many—in London. England, Scotland, Ireland, the United States, and the "Société de la morale chrétienne" were all represented. The president was Charles Hindley, M.P., and the outcome of their deliberations was the address to civilised governments, imploring them in the case of international differences to avail themselves of the mediation of a third party. Louis Philippe, when he received this address, made an interesting reply. "La Paix," he said, "est le besoin de tous les peuples et, grâce à Dieu, la guerre coûte beaucoup trop aujourd'hui pour qu'on s'y engage souvent, et je suis persuadé que le jour viendra où, dans le monde civilisé, on ne la fera plus."[2] A similar answer came from the President of the United States.

[1] Le Mouvement Pacifique. Potonié-Pierre. "At the outset the pacific movement had an essentially religious character, a character it has kept, indeed, in England and America. It is only in Europe that the new elements introduced by the liberals, the free-thinkers, and the socialists have widened the sphere of action of the agitation."

[2] "Peace is the need of all the nations, and by God's grace war costs too much nowadays to engage in it often, and I am persuaded that the day will come when the civilised world will make war no more."

In 1848 a second convention was held under the name of "Peace Congress" in Brussels, under the presidency of M. Visschers. There were seventy delegates from England and America, thirty of whom were women. Four propositions were adopted relating to :—

(1) Condemnation of War.
(2) Establishment of a supreme jurisdiction between nations.
(3) The codification of International Law.
(4) A general disarmament.

Lord John Russell indicated his acquiescence and good wishes, and made an informal promise of a peace policy for the English Foreign Office. It was the irony of fate that Palmerston soon succeeded him, and cast the promise to the winds.

The Congress at Paris in August 1849 was a notable one. More than five hundred English delegates were present, fifty Americans, and a large number of French delegates, while great bodies of the outside public watched the proceedings. They were of no ordinary nature. Among those who took part in the debates, which were eloquent and enthusiastic, were Victor Hugo, who was president, Henry Richard, who has earned a notable place for himself in peace annals, Cobden, Emile de Girardin, Bastiat, Gustave de Molinari and Elihu Burritt—perhaps the most interesting figure of all. The Peace Societies for their next reunion selected Frankfort-on-Main, where they deliberated in due course. But the last, and in many respects the most brilliant of the Congresses, was that held in 1851. It was the year of the Great Exhibition in London, and the "amis de la paix" did not let the opportunity pass.

The proceedings lasted for three days—the 22nd to the 24th July. Twenty-two members of the British House of

Commons, several members of the "Assemblée Législative" and of the "Conseil d'Etat" of France were present: six important religious bodies and two municipalities were officially represented: thirty-one delegates and many others came from America. Altogether more than three thousand people were in the body of Exeter Hall, while the debates were in progress and addresses were being delivered. Perhaps one of the most novel of the resolutions was "The Congress condemns loans to be used for the purpose of making war or for maintaining and increasing armaments"—now one of the most hackneyed of the proposals at the annual Peace Congresses.[1]

The proclamation of the Empire in France led to another period of stagnation. When it had passed, Potonié-Pierre and Frederick Passy became the promoters of the new era of active propaganda. In 1863 they published the "Courrier International," which, in 1867, on the foundation of the "Ligue de la Paix" by Passy, was given the name of the new society.

It is extraordinary how many men of world-wide fame became contributors. Even Guiseppe Garibaldi, on the 10th July 1864, wrote, "Votre enterprise est sainte . . ., si mon nom peut vous être utile, il est à vous et à la cause à laquelle nous nous sommes consacrées."[2] The consequence was a decided fillip to the movement which stood the storm of '70 and '71, and, to-day, has attained such astonishing size. It is needless to follow the expansion of the agitation beyond the foundation of the "Ligue de la Paix," first of all, because Revon has done it, while he omitted the "origins," and, secondly, because it becomes

[1] Arguments against this and similar proposals are to be found in the chapter on arbitration in the "Arbiter in Council."

[2] "Your enterprise is a sacred one. . . . If my name is of any use to you it is at your service and at the service of the cause to which we are devoted."

too complex to follow accurately. After 1870 the movement had assumed its modern form, with which the reader cannot fail to be acquainted. We now trace a parallel and secondary propaganda, carried on by practically the same bodies and individuals.

II.

The Parliaments.

A concise review has just been concluded of the manifestations of that intense horror of war, which began to animate many religious bodies in England and America, at the beginning of last century. In this section the atmosphere is identical with that of the Peace Societies, in as much as the debates to be described, were engineered by the friends of Peace in the various Houses of Parliament. Our object is to indicate the nature of the discussions, consequent upon these resolutions. The Parliamentary movement falls into three divisions. The American movement in the second quarter of the century; the English movement prior to the Alabama case; and the Continental movement after 1872.

It is in America that the origin of the Parliamentary, as well as the Peace Society propaganda, must be sought. As early as 1835 the "American Association for the Promotion of Peace," through two of its members, Messrs. Ladd and Thomson, laid a project before the Legislature of Massachussetts. The heart of their project was, "to find, instead of an appeal to arms, some definite and friendly solution of all international differences," and they were of opinion that, "an international tribunal, permanent, or established in some other way," ought to lead to that end. Strange to say, the Senate accepted it forthwith by nineteen votes to fifteen. Thomson, encouraged by this experience, two years later, tried both the legislative chambers of Massachussetts. The Lower House accepted the resolution unanimously, and the Senate smiled upon it

by 35 votes to 5. Towards the end of the same year, the "Peace Association of New York and Vermont" carried the question before Congress. Their proposal to establish an international tribunal was quite unsuccessful. A second petition by Mr. Ladd to the Congress in 1839 was contemptuously rejected, but, by 1851, the Congress had completely changed its note. The resolution, which then passed, was in the following terms:—"Resolved by the Senate and House of Representatives, that the President of the United States is hereby authorised and requested to negotiate with all civilised Powers, who may be willing to enter into such negotiation, for the establishment of an international system, whereby matters in dispute between different governments agreeing thereto, may be adjusted by arbitration, and, if possible, without recourse to war."

It is needless to follow the American movement further. Once such a remarkable resolution was passed, the rest may be guessed.

It was on the 12th of June 1849 that Richard Cobden rose, in the House of Commons, to put the following motion:—"That an humble Address be presented to Her Majesty, praying that she will be graciously pleased to direct her Principal Secretary of State for Foreign Affairs to enter into communication with Foreign Powers, inviting them to concur in Treaties, binding the respective parties, in the event of any future misunderstanding which cannot be arranged by amicable negotiation, to refer the matter in dispute to the decision of arbitrators." Cobden's speech, which was delivered in an exceedingly hostile House, was a splendid piece of work and still reads clear and fresh in Hansard to-day. Mr. Cochrane, who followed, "considered the proposals as ill-timed, objectionable and ridiculous." Lord Grosvenor supported, and was "perfectly willing to take his share with the Hon. Member for West

Riding in any ridicule that might attach to those who were in favour of the motion." Viscount Palmerston had no words to express his horror of war, but could not support. After Milner-Gibson and Lord Russell had spoken, the debate terminated. The motion was rejected by 176 to 79, though to-day a similar motion would go through Commons and Lords unanimously.

The most memorable debate, however, in the English House of Commons was in 1873, when Henry Richard made his remarkable speech—in many ways equal to that monument of eloquence, the "True Grandeur of Nations," which was delivered by the American, Charles Sumners. At nine o'clock, on July 8th 1873, Henry Richard rose to try the feeling of the people's assembly. He moved "That an humble address be presented to Her Majesty, praying that she will be graciously pleased to instruct her Principal Secretary of State for Foreign Affairs to enter into communication with Foreign Powers, with a view to further improvement in International Law and the establishment of a general and permanent system of international arbitration." We can only spare space and time to quote the peroration of this splendid oration, which was subsequently spread abroad in pamphlet form. "These are the things in my opinion," he said, "which honour England, and it will be a still greater honour, if possible—a signal, a crowning honour—if she becomes the harbinger of peace to the world, if she takes the first step towards the organisation of that peace, on solid and lasting foundations, so as to do something to realise the glorious vision of our Poet Laureate—

> 'When the war-drum throbs no longer and the battle flag is furled,
> In the Parliament of man, the Federation of the World.
> When the common-sense of most shall hold a fretful realm in awe;
> And the kindly earth shall slumber, wrapt in universal law.'"

After the motion was seconded, Mr. Gladstone took the floor. His position is easily summed up in his own words : " In fact, so far as this country was concerned, and to a great extent other countries, there was gradually growing up a series of precedents which we might hope—but it must be by degrees—would harden into rule . . . He pointed out that he had but one motive for declining to request the House to adopt that Motion—namely, that its adoption would tend to put in jeopardy the progress of the very cause his Hon. friend had at heart."[1] The reason for this attitude was not timidity nor yet mistrust of the principles embodied in the resolution, but the sharp sense of practicality which the statesman cannot fail to possess. Mr. Gladstone held Laveleye's " Les Causes de la Guerre en Europe " in his hand, and criticised his High Court proposal. It is interesting to notice that the great Premier thought very little of a tribunal armed with merely a moral sanction.

Despite the leader's advice to withdraw, Richard pushed his resolution to the vote, and had the satisfaction of carrying it by 98 votes to 88. The reply of the Queen to the petition, though in smooth terms, was so vague—confusing mediation and arbitration—that there was an evident desire to elude the real points at issue.

The final chapter in this propaganda through the English Parliament was enacted in the Upper House. On 25th July 1887 the Marquis of Bristol rose to move, " That this House, in view of the yearly increasing armaments of European nations, is of opinion that the formation of an international tribunal for the reference of national disputes in the first instance, is highly to be desired."

The Marquess of Salisbury replied in a prophecy which now seems very far from the mark : " I do not believe that

[1] Hansard. Debates. 1873.

one man in one hundred supposes that such an issue as my noble Friend desires, intensely desirable as it is, will be witnessed by ourselves, by our children or by our grandchildren. It is idle to attempt to conceal from our minds the horrible realities of the case." The motion was withdrawn.

The spirit in the Commons was, however, quite different. No actual resolution was framed to test it, but the powerful speeches of Mr. Cremer, Mr. Bryce and Mr. Labouchère, when Lord Salisbury sent the ultimatum to Portugal in 1890, were significant of this transformation.

Henry Richard's motion in 1873 made quite a commotion throughout Europe. Similar debates took place in many of the continental Parliaments. It is impossible to enumerate all. A selection of the most interesting must suffice, beginning with Italy. As early as 15th October 1860, Garibaldi sent round a memorandum to all the Powers of Europe, relating to the maintenance of peace and to disarmament—a remarkable note from a remarkable man, just on the eve of the battle of Volturne. When Richard piloted his motion safely through the English House of Parliament, Mancini in Italy followed suit. The motion, which is rather long, expresses the wish that the government of the King will try to make arbitration a recognised means of solving international difficulties. Its reception was remarkable, and without a division or amendment it passed through the Chamber, November 24th, 1873. Ten years later Italy became one of the pioneers in the use of the "clause compromissoire," in a treaty with England and Montenegro.

Two friends of peace, named Van Eck and Breduss, tried the temper of the Dutch Parliament, about the same time as Mancini was so successful. Their reception was hostile. But, by persistence, Van Eck got a favourable reply from

the government, though he had to wait five years. The same battle was fought in Sweden, early in 1874, and in Denmark, early in 1875.

France and Germany were later in the field, owing to the great upheaval—the crime—of 1870. It was not till 1888 that Frederick Passy could find a favourable moment for the resolution that Richard had moved in England in 1873. Germany has never been an ideal "milieu" for peace propaganda, but, in 1878, Herrn Ducker and Zimmerman spoke in the Reichstag in support of the principle of arbitration; in 1879 and 1880 Herr Büker advocated disarmament. The cause of peace is in secure hands there at the present time, and the strength of the Socialist party, with its traditions and prestige, is a good clog upon the too ambitious flights of a military aristocracy.

To-day, we all know the feeling in the parliaments. Opposition to motions of the kind we have quoted would be exceedingly difficult to find. Nowhere is the pacific tendency stronger than in the peoples' chambers throughout Europe. One manifestation and proof of this is that modern areopagus the "Interparliamentary Conference."

III.

The Interparliamentary Conference.

Mr. W. T. Stead, in an eloquent sentence, delivered in his best dramatic manner, at a meeting assembled to hear Mr. Randall Cremer, M.P., give an address on the Interparliamentary Conference, made an interesting claim for him. "He did not tell you," said Mr. Stead, "who originated that movement. Ladies and Gentlemen, it should make our hearts expand with pride to think that it was the work of an Englishman. Yes, in the brain of that man this brilliant project took shape." The continental writers do not mention his name, but it is satisfactory to know that he gained the Nöbel Peace Prize of £8000, £7000

of which he has devoted to endow peace propaganda of various descriptions.

It was eighteen years ago, upon the initiative of our countryman, that some fifteen or sixteen members of Parliament, about equally divided among the House of Commons and the French Lower Chamber, met in Paris on 31st October at the Hotel Continental. Mr. Gladstone could see far enough to exclaim "the 31st October is a memorable day!" In a single year the Conference expanded in a marvellous fashion. It was after the meeting in 1889 that M. Sabatier made the prophecy which has been more than accomplished: "Nous sommes maintenant comme l'enfant qui naît: mais avant dix ans nous constituerons un veritable parlement international."[1]

It is almost useless to-day to point out the nature of this Conference. It has, of course, neither a legislative, nor judicial, nor executive power; it is a meeting, unrecognised by any of the governments formally, of the members of the various popularly-elected legislatures of the world.

The two Parliaments which were represented in 1888 had become, in 1889, swamped by members from the United States, Belgium, Denmark, Spain, Italy, Hungary and even the Republic of Liberia. The meetings, from the first, have always had the character of peace meetings, which is the inevitable outcome of the state of feeling necessary to the success of such a movement. Their resolutions partake of the normal type, such as, "a recommendation to all civilised governments to conclude treaties of permanent arbitration, reservation only being permissible in the case of independence and sovereignty, to which these treaties can do no harm." This was the first of a series in 1889.

[1] "We are like a new-born child; but before ten years have passed we shall constitute a real international parliament."

Under the Presidency of Lord Herschell the second meeting was held in London in 1890. The number of deputies present was two hundred and fifty. Mr. Gladstone sent an eloquent letter. Rome was the place of assembly the following year, with a slightly reduced number. The movement has progressed. It never lacked prestige from its inception, but, to-day, its influence is immense. We have only to cast our minds back a month or two.[1] In the Royal Gallery of the English Houses of Parliament, a huge gathering of some five hundred deputies from all the Parliaments of the world sat in conference. On August 1st 1906 the assembly unanimously pledged its groups to press their respective governments to undertake at once the preliminary studies necessary to secure an international limitation of the growth of armaments, and supplemented this by an equally unanimous vote in favour of the institution of a Budget of Peace, pledging the Executive Governments to undertake the active propaganda of internationalism and of peace.

The subsequent speeches in Westminster Hall will be fresh in the minds of the reader. Mr. W. J. Bryan, the coming man of the West, said, "The more I think about war the more I marvel at the disregard which its advocates show of the transcendent importance of a human life. . . . But even the humblest life may be of infinite importance. I read the other day that the great Welsh revival was begun by the courage and fidelity of a young unknown Welsh girl, whose heart burned within her until she stood up to testify to her Lord. From that utterance by that poor, humble girl sprang the great spiritual awakening which has changed so many lives and transformed so many communities. Let us never underestimate the value of a single life."

The speech, however, which echoed all over the world

[1] Written in 1906.

was that of the Prime Minister of England. He advocated arbitration, the limitation of armaments and Peace in a thorough fashion and electrified his hearers with a sentence which will become classical, "La Douma est morte, vive la Douma."

Such is the Conference which Randal Cremer of the English House of Commons began with a few chosen spirits eighteen years ago at the Hotel Continental, Paris.

IV.

The Learned Societies.

There is another aspect of the general movement, viz., the propaganda of the learned societies. It will be impossible to analyse exhaustively the progress of the idea of peace among the "savants"; it must suffice to remark that nowhere does a more reasonable and moderate aspiration towards peace exist than within the Universities of both sides of the world. The study of International Law has also made great progress, not so much in scientific precision as in more general diffusion. Many University courses and curricula find a place for it, and the nature of arbitration and the details of procedure thereby become familiar to great bodies of educated men.

We must notice the Institute of International Law. It was established at Gand in 1873. It has an organ called the "Revue de droit International" which states the object of the association to be the uniting of jurists of all countries in the work of fixing the principles of International Law, of developing the machinery for applying them, and of ensuring their practical value. Such jurists as Parieu, Bluntschli, Heffter, Calvo Mancini, and Lorimer were present at its first meeting on the 10th September 1873. As might be expected of these eminent men, they recognised the uselessness of mere talk, and immediately split up the

work, which they decided it was necessary to do, among special commissions. Dudley-Field, Laveleye—author of Des Causes, etc.,—Goldschmidt and Vernon-Harcourt were entrusted with the problem of arbitration. Goldschmidt presented his project—" le code le meilleur et le plus complet qui, jusqu'à présent, ait été proposé sur cette question par la pratique et par la science "[1]—at the Hague in 1874 and it was adopted. Since then it has contributed much to the elucidation of the dark places in international law, and as a reward of its labours a few years ago was awarded the Nöbel Peace Prize of £8000.

Further, an " Association for the Reform and Codification of International Law " has contributed by its learned labours to the progress of the Peace Movement. In France the " Académie des sciences morales et politiques " has devoted much of its time to the analysis of arbitration and kindred problems—notably in 1873, when M. Charles Lucas' work was presented. The unwieldy title of this " memoire " is " La substitution de l'arbitrage à la voie des armes pour le reglement des conflits internationaux." In 1889 the Institute made Frederick Passy their president, a fact in itself both a guarantee for, and a manifestation of, their zeal in the cause of peace.

England has not lagged behind altogether. "The Association for the Advancement of Social Science," following in the footsteps of the " Institute of International Law," deputed to a committee the task of elaborating a code of international justice. The volume, which is called "Internationalism and Prize Essays on International Law," was the outcome. Dudley Field's monograph is important, while the essays of MM. Sprague and Lacombe—in French —are ingenious and instructive.

[1] Kamarovsky. " The best and completest code which, up to the present time, has been proposed on this question from either the world of practice or science."

The more modern movements it is impossible to trace here, but it must suffice to point out that the "Académie des Sciences morales et politiques," by its generous prize, called forth Revon's huge work, and probably also Dreyfus' smaller volume—both of which, despite the many criticisms we have urged, have had and will have great influence upon the progress of the idea of peace. It is singularly unfortunate that England and America do not possess a similar study to Revon's, because, as was pointed out in the introduction, neither Dr. Darby Evan's "International Tribunals" nor "The Arbiter in Council" are constructed upon a plan which would render them good substitutes.

For a young sociologist and historian a unique opportunity is presented. A thorough reconstruction and weeding of Revon's book, with the added material of the last few years and a chapter on the Hague Conference, would make at once a scholarly and useful study.

CHAPTER IX.

The Progress of International Law and Diplomacy towards Arbitration.

Jurists and diplomats have not hitherto figured largely upon our pages, a fact which makes the present chapter a very necessary one, in as much as the part they play in the management of international affairs is of the very highest importance. It has been acutely pointed out that peace societies and popular movements, press opinions and parliamentary congresses have nothing directly to do with arbitration; the immediate agent is the jurist, and through him all the others must work if positive results are to accrue.

This is one conclusive reason why the development of international law must not be left on one side, in such a study as this. This juridical progress is slow, but can be best watched in various institutions of modern law. It will be convenient to follow the established order in analysing these organisations, which is from Prize Courts, Mixed Courts and Mixed Commissions through diplomatic congresses to the "clause compromissoire," which has occasionally found its way into treaties between modern nations. This analysis will provide us with a fairly complete "aperçue" of the advance that has been made towards an ideal of law and order in place of a chaos of license and disorder.

I. Prize Courts.

In the old days, the distinction between a ship of war, a privateer, a pirate and a merchantman was far from definite, and that, too, not without cause; each type transformed itself into any other, as circumstances and the hope of gain seemed to provide opportunity. When two nations were at war, this indefiniteness became absolute chaos, and both sides were often more injured by nominal friends than open enemies. The general onslaught upon the foe by every ship that cared to take the risk came to be restricted by the organisation of what is known as the "Course." The time referred to here is from the XIIIth century, for it is in this century we find the germ of the prize court. The "Course" and the Prize Court indeed are complementary. It would have been useless to attempt to restrict the pillage and plunder that was rampant everywhere, had there not been instituted also some tribunal, capable of deciding upon goods that were actually seized, whether they had been acquired justly or unjustly. These two steps were an immense advance. Any ship, which now was wanted to do privateering work, had to receive a patent from the State; the captain was enjoined not to attack the enemy during armistice or in a neutral's port. Besides he was under the immediate control of the Admiral and had to submit all captures to a court. In a treaty dated 1497, between England and France, there occur some rules to be observed by these courts; the award to be rendered without delay—at the latest within a year; and other such stipulations. Thus we see that the present day Prize Court has a long history—the outcome of the struggle for security upon sea as well as upon land.

Each country adopts a somewhat different course on the outbreak of war. Great Britain, by the terms of the Prize Act, when war is declared, nominates to solve prize

questions two judges, selected from the Probate and Admiralty Division of the High Court. The United States let the ordinary courts sit upon these questions first, and the Supreme Court only on appeal. The Admiralty Court in Russia officiates; in Italy, a special commission. France revised her law in 1869, and the Prize Court was established at Tours in 1870. It is composed of a president and five members, who settle upon the validity of the claim to captured property. The appeal is to the Conseil d'Etat.

Thus the conclusion is that a Prize Court is no transitory commission, but a real jurisdiction based upon international law and performing its functions just in the same way as any other court. But what is its relation to arbitration? For a considerable period the Prize Court was exclusively a national court. Organised upon a national basis, it assumed the right of determining the validity of prizes taken from neutrals; such a course could not fail to lead to injustice. Hence there have been attempts to give a mixed character to these Courts, *e.g.*, the French treaty with Tunis in 1830, and with Tripoli in 1832, and one with Sardinia in the same year were signed to effect this object.

A great many of the jurists (Hübner, Wheaton, Maartens and Gessner) wish to reform these courts for various reasons, all rooted in the anomaly of a national body being called upon to solve international questions. There are suspicions as to the impartiality of such bodies; hence the attempt to limit their competence and to secure the recognition of the inviolability of private property at sea. This great reform was mooted at Paris in 1856 and is still to the front, but is still an unaccomplished project.[1]

The Institute of International Law focussed its attention upon this defect of organisation in Prize Courts. A commission was appointed to look into the matter, and

[1] Since this was written, the Second Hague Conference has established an International Prize Court. See p. 263.

in 1876-7 Westlake, Bluntschli, Lorimer, Bernard, Bulmerincq and others presented their brochures.

As a result of these learned deliberations the Institute, at its session in Zurich, laid down the following articles as the basis of reform :—

(1) De formuler, par traité, les principes généraux en matière des prises.

(2) De remplaçer les tribunaux, jusqu'ici exclusivement composés de juges appartenant à l'Etat belligérant, par des tribunaux internationaux qui donnent aux particuliers de l'Etat neutre ou ennemi, de plus amples garanties d'un jugement impartial.

(3) De s'entendre sur une procédure commune à adopter en matière de prises.[1]

Bulmerincq has prepared a code for these courts upon their new basis, which has obtained the sanction of most of his colleagues, and only awaits a favourable opportunity to be adopted.

This tendency is in many ways remarkable, the tendency, I mean, to regard matters from a standpoint, more and more international. The widening of national courts into international courts is not only encouraging to the jurist but is extremely significant of what a powerful instrument a sense of justice is, when based upon scientific principles and not on mere sentiment. Many see in this transformation the germ of a supreme international court, though that ideal must have faded since the establishment of the Hague Tribunal. We must now pass on to a further indication of this development of law and justice.

[1] (1) To draw up, by treaty, general principles with regard to prizes.

(2) To supersede the tribunals, hitherto exclusively composed of Judges of the belligerent state, by International Tribunals with the object of affording to individuals of a neutral or hostile state, fuller guarantees of an impartial award.

(3) To agree upon a common procedure for adoption in prize cases.

II. The Mixed Courts.

When a man leaves his country to take up his abode in another he becomes subject to the law of the new country. He cannot claim to be judged under the law of his own land because it is esteemed one of the chief marks of sovereignty to maintain jurisdiction over all people within the borders of the state concerned. One nation, therefore, cannot, as a matter of principle, exercise jurisdiction within the territories of another sovereign state.

Hence it is by no means an uneventful achievement so to have surmounted difficulties that, in most parts of the Near East, those nations which have consular representation, can partly provide a special tribunal for such of their subjects as may, for various reasons, be domiciled there. There is another aspect to the question. The quotation is from Kamarovsky. "Par cette réforme (judicial reform in Egypt) une tentative a été faite pour rapprocher graduellement et concilier sur le terrain de droit, les deux mondes chrétien et musulman, délimités et désunis entièrement durant beaucoup de siècles par des capitulations qui présidaient à leur relations réciproques."[1]

Such a state of matters, from the point of view of theoretical sovereignty, is quite abnormal, and is only to be explained by the abnormality of the situation it was framed to meet. The only great factor, which makes a common jurisdiction for Mussulman and Christian in Turkey undesirable is acutely noted by Revon. "La-bas, le Koran, qui est le dogme est aussi la législation; ce livre constitue à la fois un catéchisme et un code; il ne pouvait être question d'appliquer à des infidèles une loi sainte qui n'était point

[1] "By this reform an attempt has been made to gradually bring together and unite, upon the platform of law and justice, the Christian and Mussulman for so long kept entirely apart by the 'capitulations' which governed their mutual relations."

faite pour eux."[1] Hence, from the time of Mahmoud, who conceded jurisdiction over their people to the Greek leaders and to the heads of the religious order, when he captured Constantinople, it has been a principle in the Ottoman Empire to exclude all foreigners from participation in the national laws.

The early method of cutting the knot was by the "capitulations" or conventions, which have been modified in the course of centuries. To-day they form the indispensable guarantee for the security of Christians in the Orient, though regarded now by the Turks as a humiliation they would fain remove.

Egypt provides a still more interesting procedure. After Mehemet Ali had opened his kingdom to civilisation—a secret desire to oust Turkey seemed to be his motive—European capital and capitalists began to invade it. Railways and canals were projected and begun, and the European population, which had been three thousand in 1836, was, in 1876, more than two hundred thousand. According to the old system, each consul, as it became necessary, began to extend his jurisdiction. Nominally they should have judged only differences between people of their own nationality, but by an extension of the rule "actor sequitur forum rei," which gives competence to the consular court of the defendant, they judged not only suits between foreigners of different nationalities, but between natives and foreigners, provided the latter were defendants; indeed the native courts began to be superseded. The gradual extension of consular courts was helped on by the inaction of the Egyptian government. It came to this finally, that instead of there being a single legislation which embraced the whole people, as is the

[1] In the East, the Koran, is at once the basis of religion and law: it is a catechism and a code. There could be no question of application to the needs of unbelievers, of a sacred law which was in no sense framed for them.

normal case, there were in Egypt no less than seventeen different jurisdictions or consular courts; these applied the laws of their own countries, laws which often varied greatly upon fundamental questions of justice and procedure.

A reform was necessary. It would, however, have been unwise to abolish the "capitulations" altogether: Mussulman judges were too far from the western spirit to have jurisdiction over the western peoples. A middle course was selected and the consular courts gave way to mixed courts. It is unnecessary to go into the organisation of these, but the tendency at work is important and should be observed. Courts which were purely European have disappeared completely in Egypt. International courts have taken their place, and the jurists are convinced that such a transformation will be consummated all over the Orient. Revon seizes the idea and asks one of his optimistic questions. "N'arrivera-t-on pas," he writes, "aussi à créer des jurisdictions mixtes pour les litiges entre les peuples?"[1] and that, undoubtedly, as Shakespeare has it, is the question.

There is another institution still which will illustrate the tendency we are investigating, viz., Mixed Commissions.

III. Mixed Commissions.

The borderland between diplomacy and an organised tribunal is occupied by the mixed commission, and, as might be expected, either element, viz., the diplomatic or the judicial, may predominate. The Mixed Commission has a long past, in as much as one was established in 1310, between the Empire and France, *i.e.*, in the second great period. The War Period, brought on by the Reformation and the discoveries of the New World, made the new-born

[1] Will not the day come also when mixed jurisdictions will decide the differences of peoples?

institution disappear. The last century, however, has seen it revived with astonishing success.

After the Congress of Berlin in 1878 two important commissions were established—the one was composed of representatives of the Great Powers and the other of delegates from the Danubian States. The work of these two commissions was to watch over the free navigation of the Danube. But they were essentially diplomatic, whereas our interest is specially centred in those mixed commissions wherein the judicial element predominates.

The United States has the honour of developing the Mixed Commisssion; in virtue of her conventions with nearly all the American States, most of those of Europe, and especially with Great Britain, she has established a great number of these organisations. These are (1) Conventions of the United States and New Guinea, 10th September 1875; (2) with Paraguay, 4th February 1857, with Costa Rica, 2nd July 1860; (3) with Peru, 12th January 1863; (4) with Colombia, 10th February 1864; (5) with Venezuela, 24th April 1866; (6) with Mexico, 4th July 1868; (7) with Peru again, 4th December 1868; (8) with Spain, 12th February 1871; and (9) with England, 8th May 1871.

Since then there have been great numbers of mixed commissions entered into by all nations for all purposes—delimitation, fishery disputes, *e.g.*, Great Britain and United States (1893) concerning the Behring Sea Fisheries —and claims of various kinds. The nature of the latter group may be illustrated from a Convention signed between this country and Chili after the Civil War of 1891. British subjects made claims against the former country, and a mixed commission was established to settle the difficulty.

Kamarovsky sees in these commissions the germ of his High Court, to advocate which his great work was written.

Consequently, he examines them thoroughly. The tendency at the present time is not to distinguish them sharply from arbitration, so close is their connection. They are used for exactly the same purposes, and except for a slight divergence in procedure and formation, the mixed commission is identical with an arbitral tribunal. Revon and Kamarovsky, however, keep the line clear, though not without indicating the intimate relationship existent between them.

The procedure, of course, is determined by the Treaty or Convention which calls the Commission into being, and varies therewith. An examination of these Conventions, however, brings to light certain uniformities and rules. First of all, those who wish to have claims submitted to a mixed commission cannot do so, unless the national courts of the defendants are unable to solve the difficulty. Again as to formation : the commissioners are nominated by the sovereign power of the two countries; usually there is an odd number; each contracting party nominating an equal number, and an umpire being selected in addition. The umpire may be chosen in many ways :—by the other commissioners, if they can agree; by lot, if they cannot, or even by a neutral sovereign. The treaty indicates the town where the commission is to sit, the time of the meeting, the oath to be taken, and the person qualified to take this oath, the approximate duration of the sittings, the replacement of members who may not be able to take part owing to death, or incapacity or refusal to sit, the witnesses to be summoned, the documents to be examined, the judgments that will have to be given, and the principles upon which they should be based. The commissioners, however, have a power of initiative in all secondary matters such as the order and method of their deliberations. They draw up a detailed protocol of the seances and present them to their

respective governments at the same time as the publication of the judgment.

It is evident that in the history of the mixed commission the arbitrator who wishes to draw up a scientific procedure has a veritable mine of material, all of practical value. The various rules have been framed to meet the difficulties, which have cropped up from time to time, until to-day the machinery by which a mixed commission is established, is of extreme nicety and fineness.

IV. Congresses and Mediation.

The advance, so far, has been from the Prize Courts, which are national in composition but international in competence, through the Mixed Court, which has become international, to the Mixed Commission, which has always been of international character. There was observed in the latter the alternative nature of the predominant element; it might be juridical or it might be diplomatic. The first case has been examined, and, by following the second, an easy transition is provided to the work diplomacy has done for the cause of peace. It seems rather late in the day to say a good word for diplomacy. Undoubtedly, it is the tool of the ambitious man; the turnings and twistings, lies and misrepresentations, which a Metternich or a Talleyrand use to deceive each other, stink in our nostrils, and yet the diplomat has exercised a huge influence upon the development of international law, has frequently smoothed out the path, has many times elevated justice above self interest, and has finally done no small portion of the great work of bringing about that "rapprochement" among European nations which, since the ascent to the throne of King Edward, has given rise to astonishing manifestations of amity and good fellowship.

Let us analyse the pacific mission of diplomacy in general. Our object is to find out whether diplomacy has

managed to frame any machinery of special efficacy for the promotion of peace, and that can only be accomplished by investigating its functions. Now, *primâ facie*, the solutions of international disputes arrived at by diplomatic means fall into two or three chief classes. The first of these is the solution that is the outcome of the play of chance, the second is that which is the result of direct negotiation, while the third is that type which depends upon the intervention of a third party. It is this last species which is of practical interest in modern times, but notwithstanding, the two former are instructive and suggestive.

I. *Solutions based on Chance.*—In the Middle Ages, if two parties could not agree and were unwilling to call in a mediator or arbitrator, their differences were often submitted to the determination of chance. The most common forms of this primitive judgment were the use of the lot and single combat. The latter method is familiar from the legend of the Curiatii and the Horatii in early Roman myth, and, like most manifestations of the working of the undeveloped intelligence, is rooted in a feeling deeper than at first glance appears. One did not make war only to cripple or subdue one's enemy, but especially to see on whose side justice lay, justice being always held to be with those who won the fight. It was a process, a special procedure, that one used for lack of other means of proof. In the mediaeval period it was bolstered, too, by its connection with the lawful duel, very much in vogue among the seigneurs.

The use of the lot is a matter of controversy among the learned, but the claim of Fustel de Coulanges, that it should be regarded as religious, and embodying the conception that through it the working of the Almighty will is made known to man, seems to be beyond dispute. In this respect, then, these two forms of chance solutions of embittered relations

are analogous—each being merely a mechanical means of making clear the true and the just by a higher agency.

The single combat has gone with the duel, but the use of the lot has still its advocates. Heffter, for instance, makes the proposal that when a negotiation or an arbitration would be long and delicate, and is of such a nature that the result of the cast would inflict no dire injustice upon either party, then it should be applied. The argument, however, seems to be of little cogency, though it is undoubtedly interesting. The method that is now to be described would seem to deal with questions of such a nature in a more serious and dignified manner.

II. *Direct Negotiations.*—The first and simplest method, when a difference becomes apparent, is for the two countries to enter into negotiations directly through their diplomatists. When the matter is laid bare and the rights and wrongs of the case are evident, there are two arrangements possible—(1) one State may own itself in the wrong and promise to set matters right, or (2) an agreement upon a basis of mutual concession may be signed.

III. *Mediation.* — *(a)* "*Bons Offices.*" — These are usually, as by Vattel, Wheaton, and Calvo, assimilated to mediation, but there seems to be a distinction, though an unimportant one. When a neutral State first gets in touch with two contending parties with a view to bringing about a real mediation in the end, these preliminaries are called "bons offices."

(b) Mediation.—The first duty in a study of mediation is to indicate the importance of the 8th Article of the Treaty of Paris in 1856. The London Peace Society, profiting by the meeting of representatives of the Powers, sent a deputation to Lord Clarendon, who was the delegate of Her Britannic Majesty. The members of this deputation were Hindley, Sturge, and Henry Richard, all splendid

fighters in the cause of peace; indeed three of the "grands pacifiques." They brought with them a clause with reference to the bloodless solution of those international differences that might arise, and begged Clarendon to have it inserted in the Convention. When the British representative moved its inclusion there was a chorus of approval —Walewski for France, Comte de Buol for Austria, and Baron Manteuffel for Prussia. The plenipotentiaries then expressed in the Treaty "le vœu que les Etats entre les quels viendraient à s'élever de graves dissentiments, avant de recourir à l'emploi des armes fissent appel autant que les circonstances le comporteraient, aux bons offices d'une puissance amie."[1] They also expressed the hope that "les gouvernements qui n'ont pas pris part au congrès adhéreraient à la pensée qui avait inspiré le vœu inséré dans ce protocole."[2] Forty states responded to this appeal.

The question to be settled is, Is mediation merely a platonic wish or has it a practical value? What is its real nature? It is fortunate that the Hague Conference went thoroughly into the matter, in as much as there is in consequence an analysis of the institution by some of the acutest men in the world.

Article II. of the Hague Arbitration Treaty is as follows: "In case of a serious disagreement or conflict, before an appeal to arms, the Signatory Powers agree to have recourse as far as circumstances will allow, to the good offices or mediation of one or more friendly powers"; an Article which, in substance, reaffirms the protocol we have quoted from the Treaty of Paris in 1856.

It was elucidated at the Hague that the difference

[1] "The wish that States between which serious differences have arisen, before resorting to arms should make an appeal, as far as circumstances allow, to the good offices of a friendly power."

[2] "The Governments which have not taken part in the Congress would give adherence to the thought which had inspired the wish inserted in this protocol."

between good offices and mediation was a nominal one and not recognised at all in diplomatic usage.

The great advantage of mediation, as compared with other means calculated to smooth international crises, is the remarkable elasticity of its action and the ease with which it can be adapted to particular circumstances in each case. Further, in so much as it appeals to the free consent of the parties, it in no way infringes the principle of sovereignty. "It acts by influencing their free will, without in the least impairing it, or even throwing doubt upon it."[1] The necessity that mediation and good offices must proceed in a courteous and friendly manner, and the fact that it can never be understood as anything but conciliatory advice, give a double advantage to these instruments of the peace-making diplomatist. First of all, both mediation and good offices leave the independence of the Powers addressed entirely intact, and secondly both are available not only for differences of right but for differences of interest. It is this latter characteristic which makes mediation so important, even beyond arbitration itself. Such an instrument, well-handled and used with a sincere desire to serve the cause of peace, would seem to have great prospects, but we have Mr. Holls' assurance that, up to this time, mediation has played one of the most modest parts in the settlement of international controversies, and that this fact will appear most clearly from the history of recent conflicts. "If a reason," he continued, "is sought, it will be found that the question of mediation is usually put in a manner which is as unsatisfactory in theory as it is in the practice of International Law."[2]

The basis of the obligation upon the parties in conflict "to have recourse to the mediation of one or more neutral

[1] Holls. "Peace Conference at the Hague," p. 177 *et seq.*

[2] Op. cit., loc. cit.

powers" is expressed in the Treaty of Paris and the Protocol of the Congress of Paris, as well as the Berlin Treaty about the Congo in 1885. This character of mediation is at once irregular in theory and impossible in practice. A request for good offices or mediation presupposes, of necessity, an agreement preliminary to all action, on the subject of the necessity for it and the existence of the proper occasion. But to expect that in the heat of a struggle between divergent interests, such an agreement will be forthcoming, is to expect the improbable if not the impossible. In fact, the whole theory is topsyturvy. It is absurd to put an obligation—as has been done—upon States to request mediation, when the very request itself presupposes an agreement regarding the selection of the mediator. But we have seen that three treaties have done so; the inevitable outcome, of course is that they remain a dead letter, for no treaty can oblige States at cross purposes to limit their choice to such and such a mediator.

The history of the institution itself will prove our contention. Since the Congress of Paris in 1856, several cases are extant when neutral States, on the basis of Article 23 of that Congress, have proposed their mediation or good offices, but there is not one single instance when States in dispute have addressed to neutrals a request for arbitration. As Holls acutely observes, "In 1898 during the controversy between France and Great Britain, concerning Fashoda, neither one nor the other of these Powers dreamed of having recourse to the provisions established by the Conference of Berlin in 1885, and requesting the mediation of a third Power."[1] A dozen such instances might be given.

The "obligation" defined in the treaties may cut both ways. It may be considered as applicable to neutrals and that they must offer their good offices. This, however, is

[1] Holls, op. cit., p. 179.

neither recognised in the Treaties nor by many of the jurists.

Opinions on mediation vary a good deal. Bluntschli and Heffter do not hesitate to call it dangerous and harmful meddling. Hautefeuille and Galliani hold a somewhat similar view. It is time, however, that this was contested. It is undoubtedly the case that numerous examples of serious disagreements, which never compelled the neutral powers to offer their mediation, are recorded. The result of this backwardness was war, and, had the diplomatists made their offer and prevented some or all of these conflicts, they would have rendered an inestimable benefit to society. Often, too, an offer of mediation has come too late. Great Britain, in 1870, held back till the very last minute, and the French Government was compelled to refuse her proffered mediation.

Mediation, elastic as its nature is, is of great service in terminating struggles which have dragged their weary length out too far. Austria and Prussia in 1866, Chili, Peru and Bolivia in 1882, and Greece and Turkey in 1897 were reconciled by the intervention of neutral powers.

By the article we quoted at the beginning, the Hague Conference, in view of such facts as these, established mediation as a permanent institution. A solidarity of interests and a common participation in the moral and material benefits of civilisation must, in future, supplant that isolation of political existence that ruled hitherto among nations. It was laid down as a principle that indifference to an international conflict is not an attitude that can be maintained to-day. Wherever conflict may arise, and between whatever States, it must be regarded as an international evil to be ended or prevented by international means.

To correct any misconception, the limit must be observed.

The phrase used is "In case of serious disagreements or conflicts, before an appeal to arms." Outside of this exceedingly confined area, the offer of mediation simply constitutes meddling, in itself an enemy of peace. Further, note that the article contains the exceedingly important words "as far as circumstances will allow." Asser of Holland protested that such an article, which, naturally, has no sanction, would be entirely invalidated by such a clause. M. Bourgeois of France, supported by the majority, was of the opinion that the article was at best a very general statement of principle, the application of which to the most diverse states of fact, it was impossible to foresee, and it therefore seemed prudent to avoid making it absolute.

Considerations of space will prevent our going further into an analysis of each of the subsequent articles. But, to show how complete a scheme has been built up by the Hague Conference, it will suffice merely to quote them.

Article III.

"Independently of this recourse, the Signatory Powers consider it to be useful, that one or more powers who are strangers to the dispute should, on their own initiative and as far as circumstances will allow, offer their good offices or mediation to the States at variance. The right to offer good offices or mediation belongs to Powers who are strangers to the dispute, even during the course of hostilities. The exercise of this right shall never be considered by one or the other of the parties to the contest as an unfriendly act."

The chief service done to international law is the fixing of the status of mediation, a point exceeding dubious before, when even Bluntschli could call it "harmful meddling."

ARTICLE IV.

"The part of the mediator consists in reconciling the opposing claims and in appeasing the feelings of resentment which may have arisen between the States 'at variance.'"

ARTICLE V.

"The functions of the mediator are at an end from the moment when it is declared, either by one of the parties to the dispute or by the mediating power itself, that the methods of conciliation proposed by it are not accepted."

ARTICLE VI.

"Good offices and mediation, whether at the request of the parties at variance or upon the initiative of Powers who are strangers to the dispute, have exclusively the character of advice and never have binding force."

ARTICLE VII.

"The acceptance of mediation cannot, unless there be an agreement to the contrary, have the effect of interrupting, delaying or hindering mobilisation or other measures of preparation for war. If mediation occurs after the commencement of hostilities it causes no interruption of the military operations in progress, unless there be an agreement to the contrary."

ARTICLE VIII.

"The Signatory Powers are agreed in recommending the application when circumstances allow, of special mediation in the following form: In case of a serious difference endangering peace, the States at variance shall each choose a Power to whom they entrust the mission of entering into direct communication with the Power chosen by the other

side, with the object of preventing the rupture of pacific relations. During the period of this mandate, the term of which, unless otherwise stipulated, cannot exceed thirty days, the States in conflict shall cease from all direct communication on the subject of the dispute, which shall be regarded as having been referred exclusively to the mediating Powers, who shall use their best efforts to settle the controversy."[1]

"In case of a definite rupture of pacific relations, these Powers remain charged with the joint duty of taking advantage of every opportunity to restore peace."

I have quoted these articles with a due sense of my trespass upon the reader's patience, but two valuable lessons can be learned from them—(1) The exact position of mediation and good offices in International Law; (2) the kind of work the Hague Conference did—severely non-utopian, but (*vide* Article 8), on the other hand, free from the trammels of a harsh and binding conservatism.

V. Permanent Treaties of Arbitration.

A treaty of arbitration or a "clause compromissoire" comes within the scope of this chapter, in so much as it is an instrument of diplomacy for securing and maintaining peace among nations. Diplomatic weapons, as was stated in the case of mediation, having been evolved from the exigencies of actual international relations, are usually very efficacious, and of all these instruments the permanent treaty is considered of the greatest value, especially by the propagandists of the Peace Societies. Indeed, the latter have made it their chief work of late years to popularise the notion of a binding treaty and to urge upon the Governments the necessity of concluding them. In Revon's work there is, of course, a great deal of special pleading with

[1] Holls' own. Arrived at by developing the idea of a "second" in a duel.

regard to arbitration, and this takes the form of minimising the role of mediation and other diplomatic methods; there is, however, perhaps a greater misconception at the root of this pleading. "La paix, en effet," he says, "ne saurait être fondée solidement que sur la justice."[1] To connect this with his argument he continues, "Mais comment introduire l'idée juridique dans le domaine du droit positif? Par quel moyen l'insérer dans les traités, qui constitue la principale source du droit des gens? Par la clause compromissoire, ou, d'une manère plus précise, par la forme la plus juridique et la plus sûre que notre principe puisse recevoir."[2] The implication is, of course, that all questions which have formed, and are likely to form the bone of contention in the future, can be brought within the scope of a juridical formula. But can they? The question will have to be investigated later, but one instance is given to show how, in our opinion, such is not, in every case, possible. Bismarck realised early in his career that German unity could only be achieved by blood and iron: if we read history aright we cannot fail to acknowledge that in the heat of victory nations easily fuse, whereas in the coldness of peace a federation is the result of long years of scheming; indeed it may never come to union at all. Putting aside all sentimentalism and taking the unification of the German States as useful and necessary, it must be confessed that Bismarck used the only possible instrument to achieve it, and that several generations of statesmen might have vainly striven, with a juridical formula and ordinary diplomatic methods, to work a similar consummation. But this by the way.

[1] It is impossible to found a lasting peace except on justice.

[2] But how introduce justice into the domain of positive law? How insert it in treaties, which constitute the principal source of International Law?—By the compromissory clause or, in a more precise manner by the surest and most juridical form that our principle can assume."

In previous chapters several instances, in antiquity and in the Middle Ages, of the "clause compromissoire" have been pointed out. It appeared, we remember, in treaties between Athens and Lacedaemon, and between the latter State and Argos. It was found, though rarely, in the XIIth century, it was more abundant in the XIIIth, it attained to its zenith in the XIVth and suddenly disappeared during the first half of the XVth. In recent years, however, the progress of this diplomatic guarantee of peace has surpassed all the recorded instances in the past.

Previous to the Hague Conference it received recognition as a useful and valuable pacific guarantee.

Perhaps its first real appearance among modern practical peace projects was in 1874, when Ch. Lemmonier drew up a scheme of permanent arbitration for "La Ligue Internationale de la Paix." The Institute of International Law was eager to review this reform, and the following year, after devoting many sittings to its analysis, accepted the principle it embodied. The next step was the conclusion of the permanent treaty of arbitration between Switzerland and the United States, after which it was almost a case of marking time till the Hague Conference.

It must be remembered that the Signatory Powers did not sign a contract to use the Hague Tribunal. Not at all! It was carefully brought out that the plenipotentanies had no power to enter into any contract of the kind on behalf of their government. They did, indeed, sign the mediation proposals which have been investigated, but that only because the reservation, "as far as circumstances will allow," converted it into a merely academic resolution, if they wished to make it so thereafter. The Hague Convention, then, is not a contract to use the Hague Tribunal but a document agreeing to convoke such a Tribunal, to make it permanent and to outline its procedure. All this was done, and the Powers signed without exception.

The hostile press made no little rejoicing over this. They prophesied that the Hague Tribunal would become obsolete before it was properly established, and, for some anxious months, such seemed to be possible. Eventually, it was pointed out that, as no agreement existed among the Powers to resort to it, wherever and whenever favourable, they should conclude treaties with one another, agreeing to submit their differences to the permanent court. Most people clutched at this as a drowning man at a straw, and the Peace Congresses made resolutions on it. When it was realised that nine hundred and three treaties of permanent arbitration would have to be concluded before the Signatory Powers were all linked together, it caused a slight pause. But the friends of peace never want for courage. They boldly embarked on their task. The Governments, too, began to realise that, to give practical efficacy to all their professions at the Hague, there was nothing for it but permanent treaties of arbitration. The Court was there; the Powers began to agree in pairs to enter its doors when a suitable controversy should arise between them.

It is essential for us to realise the nature of these treaties. They are by no means elaborate documents, and we shall, for the sake of precision, presume upon the indulgence of the reader to the extent of quoting one. This treaty is the Anglo-French agreement which has been the spring of many others. The best short description of it is an obligatory—"compulsory" conveys a wrong conception—treaty of reference to the Hague Court.

> "The Governments of . . ., signatories of the Convention for the pacific settlement of International disputes, concluded at the Hague, July 29th, 1899
>
> "Considering that by Article 19 of this Convention, the High Contracting Parties reserved to themselves the conclusion of agreements in view of recourse to arbitration in

all cases which they judged capable of submission to it.

Have authorised the undersigned to agree as follows :

ARTICLE I.

Differences of a judicial order, or relative to the interpretation of existing treaties between the two contracting parties which may arise, and which it may not have been possible to settle by diplomacy, shall be submitted to the Permanent Court of Arbitration, established by the Convention of July 29th, 1899, at the Hague, on condition, however, that neither the vital interests nor the independence or honour of the two contracting States, nor the interests of any State other than the two contracting States, are involved.

ARTICLE II.

In each particular case the High Contracting Parties, before addressing themselves to the Permanent Court of Arbitration, shall sign a special undertaking determining clearly the subject of dispute, the extent of the arbitral powers and the details to be observed in the constitution of the Arbitral Tribunal and the Procedure.

ARTICLE III.

The present arrangement is concluded for a duration of five years from the date of signature.

Evidently not a document to secure Perpetual Peace—indeed it is only a convenient little arrangement to permit the two countries to avail themselves of the advantages of a permanent court to the setting up of which they have themselves contributed. For example, two countries, such as Germany and Great Britain, who, in the opinion of the majority of people—writers and press in both countries—have serious grounds for hostility[1] and suspicion, have concluded a

[1] *e.g.*, The series of articles in the *Spectator* on "German Ambitions," and articles *ad lib.* since.

similar treaty to the one quoted. There are now limited treaties of obligatory reference to the Hague Court in similar terms between Great Britain on the one hand and France, Spain, Germany and Italy on the other, and between France on the one hand and Spain and Italy respectively on the other. Indeed, towards the required total of 903, something like forty have been completed.

Holland and Denmark and some of the South American States have proceeded a step further and have signed unlimited treaties of arbitration, *i.e.*, except in a case of actual invasion. Such a treaty may have too great an importance assigned to it. Neither Holland nor Denmark can claim to be of the number of those countries upon whom the great burdens and problems of civilisation fall. When we have Germany bound down to Russia, France, Britain, Austria and Italy by a treaty in identical terms, then it is possible to begin to dream of perpetual peace; but, alas, the two seem equally far distant. The South American Republics, Argentina and Chili, after a riotous existence, have settled down to a quiet life. That being their common decision and fearing no one but one another, they decided to put an end to that disturber of their comfort. An unlimited treaty of arbitration was signed—the King of England being the arbitrator in the first instance and the Swiss Federal Council in the second. To prepare for an obsolete function did not seem logical, so they arranged to get rid gradually of their fleets. Some of their finest ships have found a place in the British Navy, while the Chilian is glad to be relieved of the incubus. But one hesitates. Is it for the best? It is fervently to be hoped, and one trusts, that it is; but the years will show.

As a final word upon the "clause compromissoire" we shall quote a writer in the *Contemporary Review*, who most

acutely indicates the especially valuable element in it. "The Powers," he says, "seem to have given up their distrust of arbitration." "There is perhaps," he continues, "another reason for this change of attitude. They have probably discovered that a standing treaty of arbitration is a valuable instrument in the hands of diplomacy. It obviously provides a further method, a further stage of negotiation, matter for further protocols, when all the older methods, stages and protocols have been exhausted. Diplomacy is only a mass of devices and procedure for keeping questions open till the propitious moment comes, for retarding rupture when difficulties become so great that, on their merits, they are insuperable. With this further method of raising new and side issues, the risks of war are necessarily diminished as between the nations which adopt it." It is, therefore, our bounden duty to insist that our diplomatists are fully armed in their struggle for peace; this they are not unless they are provided with the "clause compromissoire." For its extension, in its "unlimited form," to the Great Powers, too great hopes must not be indulged; in so much as it fetters the contracting parties, to such an extent that they would be compelled to refuse many of the tasks forced upon them, to-day, by the necessity of progress. A clog to progress, however small, is too serious a disaster to humanity for us to court it with our eyes open.

CHAPTER X.

The Arbitrations of the Century.

In this portion of our study a slightly different method will be adopted to that employed by other writers in our sphere. Rouard de Card has but a meagre and haphazard treatment, Kamarovsky is also unequal, while Revon's study is too overloaded with detail to be plain and instructive. The best method of all would be that employed by Dr. Darby Evans in his "Pacific Settlements." In that mine of information the distribution of the arbitrations between the nations, the importance of the various instances, and, what is still more advantageous, the sum total of work done by arbitration during the century can be estimated almost at a glance. Such treatment, however, here is impossible. Hence I have sacrificed fullness of detail to considerations of clearness, continuity,—on which much stress should always be laid—and interest.

Undoubtedly the one outstanding case during the period 1794-1897 was the Alabama decision, which was the outcome of the Treaty of Washington in 1871. This circumstance, taken together with the facts that the Jay Treaty, which is the origin of this modern movement; was concluded between England and the United States, and that one of the most important projects of quite recent date,—viz., the Anglo-American Arbitration Treaty (which was not ratified) —was also to link together the same countries, makes it a good plan to take up continuously the relations of the United States and this country from the point of view of the progress of arbitration.

Hence this chapter will fall into two divisions :—(1) An

account of the arbitrations and treaties between Great Britain and the United States up to the year 1871. (2) A special account of the Geneva Convention, especially with regard to its competence and procedure. Finally, a few words may be devoted to the promising project of Anglo-American diplomacy.

This method, it must not, however, be forgotten, is subject to the serious criticism of incompleteness. To correct this, before leaving the review of the arbitrations of the century, it will be necessary to indicate the parts played by the various countries of the world in the development of Arbitration, and, perhaps, to touch upon one or two individually interesting cases.

Revon, in the opening page of a study of arbitration in the 19th century, complains of the unutterable confusion of most writers upon our subject, as to what arbitration is, what differentiates it from a mediation, and other forms of international compromise. In his magniloquent phrase, "Dans ce fourmillement de notions vagues, impossible de distinguer clairement les progrès reél de l'institution."[1] He is quite right and it may seem a violation of his principle to begin with the Jay Treaty and the early commissions instead of with the reference to the King of the Netherlands in 1822. But in Revon's treatment his object is different, and therefore, to preserve the continuity of our study and with the support of Merignhac and Dr. Darby Evans, we shall consider the real beginning of the development of arbitral methods and pacific machinery, as dating back to the concluding years of the seventeen nineties.

I.

Towards the end of the 18th century the people of the United States were extremely anxious to make war upon

[1] "In this mass of vague notions it is impossible to distinguish clearly the actual progress of the institution."

England in order to help France. At this early period of her new life such a course would have been suicidal. She had neither money, nor credit, arms nor soldiers; she needed peace, capital, and security for the development of those huge resources she was known to possess. Again the helping of France was a vain dream; France was powerless and bankrupt, and neither honour nor advantage could have been gained by taking up her cause. The wiser heads among the leading men of the States yearned for peace, and managed to entrust the task of ensuring it to John Jay, the head of the bar, the Chief Justice of the Supreme Court. The great gifts of this eminent judge were equal to the task. His tact, acumen, and wisdom undoubtedly made possible the first declaration of modern times for the settlement of international disputes by arbitration.

This treaty, known as the Jay Treaty, was concluded in 1794, and in the fifth, sixth and seventh articles provided for three mixed commissions. The first, under the fifth article, was to settle a boundary dispute, viz., what river was intended under the name of the river St. Croix, which was specified in the Treaty of Peace of 1783 as forming part of the north-eastern boundary of the United States. This commission was of three members, one chosen by each Government, and the other by the two commissioners thus nominated. The award was rendered at Providence, R.I., October 25, 1798, to the effect that the Schoodiac was the river intended under the name of the St. Croix.

The Sixth Article, also, provided for a commission, which was to determine the amount of compensation due to British subjects in consequence of impediments which certain of the United States, had, directly counter to the provisions of the Treaty of Peace, placed in the way of the collection of debts by British Creditors. This commission was one of five members and had a stormy career. Agreement upon any

point whatever seemed impossible. A Mr. Macdonald, a British Commissioner, appeared to go out of his way to irritate the others, and moved a resolution that the United States stood, in relation to Great Britain, in an attitude of rebellion from the Revolution down to the Treaty of Peace. This was taken as a gratuitous insult by the members of the commission who represented the States, and the upshot was the rupture of the negociations altogether. The English members thereafter were inclined to be cheaply sarcastic, *e.g.*, "Your suspension of our official business having left us at leisure for inferior occupations, we have again perused your long letter of the 2nd instant." It is good to learn that a treaty in the year 1802 put an end to this irritation. The United States agreed to pay Great Britain a sum of £600,000 in satisfaction of its demands.

The most important, however, of the commissions under the Jay Treaty, was that provided for under the seventh article. It sat in London. The Americans sent over as their commissioners Christopher Gore and William Pinkney —the latter a man of immeasureable gifts, eloquent and capable. Maurice Swabey and John Anstey represented our own Government. A fifth commissioner was necessary and he was chosen by lot, not out of a number of names avowedly partisan, but out of those selected by each country from a list of four, submitted by the other. This commission was faced with many initial difficulties ; important points of law in relation to contraband, rights of neutrals and the finality of the decisions of prize courts. The board concluded its work on February 24th, 1804, having completed all the business within its jurisdiction.

The arbitrations under the Jay Treaty were the beginning of the pacific settlement of difficulties between the United States and Great Britain, of whatever kind, from that date to this, with the exception of those which culminated in the war of 1812.

Peaceful relations between the two countries were restored by the Treaty of Ghent in December 24th, 1814. Like the Jay Treaty it provided for three arbitrations. Article 4 was concerned with the title to possession of certain islands in Passamaquoddy Bay. Two persons, one from each country, were to form the court. If they could not agree, it was stipulated that the points of difference should be referred to a friendly sovereign or State. St. Andrews, New Brunswick, was the place of meeting, and the award was rendered on November 24th 1817.

The second arbitration provided for by the Treaty of Ghent is very interesting. It related to the St. Croix River again, and the boundary line between its source and the St. Lawrence, which it was the task of the commission finally to fix. From September 23rd, 1816, to April 13th, 1822, the questions at issue were debated. It was then seen that agreement was impossible. A convention between the two governments referred the matter to the King of the Netherlands in 1827. He made an award on January 10th, 1831, which Great Britain would have accepted, but agreed with the United States to waive altogether, as it assumed the making of a new line in place of that described in the treaties. These boundary questions still cropped up, and the Webster Ashburton Treaty of August 9th, 1842, settled disagreements of several mixed commissions, appointed after the Treaty of Ghent.

There is yet one interesting point with regard to this convention. The first article provided for the restoration, without damage, of all territory, places and possessions taken by either party from the other during the war. No slaves were to be removed. Difference of opinion subsequently made itself felt as to the performance of its obligations by Great Britain. A Treaty in 1818 provided for this question being submitted to the Emperor of Russia. On April

22nd, 1822, the Emperor decided that Great Britain had not kept faith and must pay an indemnity. His mediation secured the appointment of a commission to decide precisely what amount should be paid. The procedure was peculiar. Each government nominated a commissioner and, at the same time, submitted the name of an arbitrator. The two commissioners were to examine the claims and try to reach a decision; if they failed, it was provided that they draw lots to ascertain the name of an arbitrator from the additional names put before them. In each case of divergence this process was adopted. Great Britain was found liable for a sum of 1,204,960 dollars, which, under a convention ratified in London, November 13th, 1826, was paid in settlement of all claims.

By 1853 a fresh set of difficulties between the same two countries was ripe for settlement. An agreement was, therefore concluded in London on February 8th of that year, under which each government appointed a commissioner. The two commissioners themselves agreed upon an umpire. A member of the House of Baring accepted the trust and faithfully discharged it. "No case of arbitration," said a writer in the *North American Review*, "has ever been more successful than this." Damages were awarded in some thirty claims, and many important decisions were pronounced by this commission. The famous cases of McLeod and the brig "Creole" came before it. The latter contained a point full of interest. The brig in question, loaded with slaves, set out from Richmond to New Orleans. The slaves procured liberty and arms. Many of the passengers were either killed or wounded, the captain was disabled, and the mate was forced to put the ship into an English port called Nassau. The ringleaders were here arrested by the English, but the others were liberated. At once came a demand from

Washington for their restitution. Great Britain said that was impossible; the slaves became free men when their feet touched English ground. It is worthy of note that an arbitration upset this high principle, and an indemnity was assessed.

The convention was carried out in its entirety, the last session of the commission taking place on January 15th, 1855. Mr. Seward once remarked that this pacific tribunal "had the prestige of complete and felicitous success."

The question known as "Reserved Fisheries" was in evidence in 1854, and a treaty was concluded between the two countries, providing machinery for any subsequent differences of this nature. It was not until 1871, when the great treaty of May 8th was concluded, that the mixed commission appointed in 1854 saw the end of its labours.

Ten years after the "Creole" case was settled, another British-American commission met. It was established under a convention of the year 1863, and its task was the adjustment of the compensation due to the Hudson's Bay Company and the Puget's Sound Agricultural Company, two British organisations, for damages, and, in addition, the transference of some of their property to lie under the sovereignty of the United States, in accordance with the rights of that country to some territories west of the Rocky Mountains—a right acknowledged in the treaty of 1846. The commissioners chose an umpire, one of the most celebrated of American jurists—Robbins Curtis. His services were not required, since, on September 10th, 1869, the commissioners concurred in an award.

II.

This decision, however, left many matters of deepest moment still to be settled. Indeed, at no time in the century, except in 1814, had the relations of the United

States and Great Britain worn so menacing an aspect as that which they assumed some little time after the conclusion of the Civil War. As we have seen, the difficulties of the preceding fifty years were all accommodated in a spirit of mutual concession and compromise. But the opening of the seventies saw the mass of the people in America, full of pent-up indignation and sense of national injury, because of a conviction that the British Government had failed to perform adequately the duties of a neutral during the period of the Civil War.

It is such a feeling as this which undoubtedly leads to war. In this case it did not actually do so, but had as an immediate result the magnifying of difficulties which, at any other time, would have been settled in a calm manner by a mixed commission. For instance, there was the San Juan Boundary question, which, before the war, seemed on a fair way to settlement. It was now revived, and excited rather than calmed the two countries. To make the opposition still more acute, on the 17th of March, 1865, before the civil war was concluded, the United States Government gave notice to Great Britain that she would consider the treaty of June 5th, 1854, in relation to reciprocity and the fisheries, as terminated at the expiration of twelve months from the day of notification.

Hence, by March 17th, 1866, the two countries faced each other, the present discontents were aggravated by old controversies, and, as the last straw, came the outbreak of Fenianism, which again brought up the vexed question of expatriation.

This was the position. Undoubtedly those writers are correct, who consider that the situation was exceedingly grave and, at any time, liable to lead to war. This is a point, however, we must investigate later. Early in the Civil War, Charles Francis Adams, the representative

of the Republic at the Court of St. James, called upon Earl Russell to submit the differences already developed to arbitration. "I am directed," he writes, "to say there is no fair and equitable form of conventional arbitrament or reference to which we will not be willing to submit."

Earl Russell's refusal was absolute and abrupt. After that statesman's deposition from office, through Lord Stanley a feeling favourable to an amicable settlement began to make itself felt. Lord Derby, the Prime Minister, indeed, at a Lord Mayor's Banquet made a proposition to the United States to re-open the question. This was the beginning of a long struggle about the terms of the Convention. The documents which illustrate it are all published by Moore in Volume I. of "The Arbitrations to which the United States has been a Party," and are interesting from the point of view of diplomacy and international law.

We shall, however, content ourselves with pointing out how the continued support of great numbers of people in both countries who strove for a peaceful settlement, alone, at times, made it possible to avoid a complete rupture.

The reward of these people of high principle was the Treaty of Washington which was signed on May 8th, 1871, on the part of the U.S. by Hamilton Fish, Robert C. Schenck, Samuel Nelson, Ebenezer Rockwood Floar, and George H. Williams; on the part of Great Britain by the Earl of Grey and Ripon, Sir Stafford H. Northcote, Sir Edward Thornton, Sir John A. Macdonald, and Montague Bernard.

This Treaty, undoubtedly the greatest treaty of arbitration in modern times, provided for no less than four district arbitrations. These four arbitrations embraced the following formidable list of international differences:

1. The Fisheries.

2. The navigation of the River St. Lawrence and privilege of passage through the Canadian Canals.

3. The transit of goods through Maine and lumber trade down the River St. John.

4. The Manitoba Boundary.

5. The Claims on account of the Alabama, Schenandoah, and certain other cruisers of the so-called Confederate States.

6. The San Juan water boundary.

7. The Claims of the British subjects arising out of the civil war.

8. The Claims of the people of Canada on account of the Fenian raids.

9. The revision of the rules of maritime neutrality.

The first of these arbitrations in order and importance was that at Geneva. In the words of John Bassett Moore, "it was the noblest spectacle of modern times, in which two great and powerful nations, gaining in wisdom and self-control, and losing nothing in patriotism or self-respect, taught the world that the magnitude of a controversy need not be a bar to its peaceful solution."

The incidents gathering round the cruiser "Alabama" can be briefly recalled. A party of confederates made their headquarters in Liverpool. They bought ships which were likely to be of service as commerce destroyers, and having fitted them with munitions in some British colonial port, sent them to prey upon the American merchant service. The "Alabama" left the Mersey on the 29th July 1862; her intermediate destination was Terceira, where two transports, one from London and the other from Liverpool, had conveyed an ample supply of munitions of war and guns. She wrought immense destruction upon the United States merchant navy, being handled with consummate skill and audacity. Finally the gunboat "Kearsage" got to grips with her off Cherbourg, and sent her to the bottom.

The United States Government maintained the responsibility of Great Britain, and this it was, in reality, that made the question one of great danger to peace and amity. The Commission established by the Treaty of 8th May 1871 was entrusted with the task of solving this difficulty.

The members of the board were five in number. The Arbitrator on the part of the United States was Charles Francis Adams; on the part of Great Britain Sir Alexander Cockburn. There were in addition three other arbitrators —Count Frederick Sclopis, the nominee of the King of Italy; Jacques Staempfli, afterwards the President of Switzerland, nominated by the Head of the Swiss Confederation; and finally, Viscount D'Itajuba, who was designated by the Emperor of Brazil.

The procedure was thoroughly considered beforehand. To give solidity to the deliberations, by agreement, three general rules were inserted in the Treaty upon the rights of neutrals. The tribunal had to settle the question first as to whether Great Britain had been lax in her duties as neutral. If so, the commissioners had power to assess the indemnity she must pay in full settlement. Finally, the two governments engaged upon their honour to consider the sentence as binding and as without appeal.

On the afternoon of the 15th December, 1871, the proceedings of the little band of arbitrators were begun. The actual work commenced with the adoption of a proposal of M. Staempfli that the Court should first of all determine what points should not be considered within the competence of the board. These were of no little magnitude. (1) There was the question as to premature recognition of the confederates as belligerents by Great Britain. (2) Questions relating to unfriendly public opinion in Great Britain during the war. (3) Questions as to blockades. (4) As to neutrality laws not directly

affected by the case under discussion. All these were placed "hors concours," and the decision arrived at was to examine the facts relative to ten vessels, belonging to the Southern States.

The Arbitrators, individually, gave in, in writing, their opinion upon the facts of the case. Then, in company, they redrafted their opinions, compromised, and finally came to an agreement upon the actual events and the responsibility. Last of all, there was the question of the amount of compensation to be paid. The United States had originally demanded

(1) Direct losses growing out of the destruction of vessels and their cargoes.
(2) The national expenditures in pursuit of those cruisers.
(3) The loss in transfer of the American Merchant Marine to the British flag.
(4) The enhanced payment of insurance.
(5) The prolongation of the war and the addition of a large sum to the cost of the war and the suppression of the rebellion.

Clauses 3, 4 and 5 were alleged by Great Britain to be outwith the competency of the tribunal, and Great Britain also denied the power of the tribunal to settle its own competency. The tribunal at Geneva ruled out these three clauses upon different grounds, viz., that they did not, upon principles of international law, form a good basis for a compensatory award. There were still, however, clauses 1 and 2. The latter, in the opinion of the tribunal, made claims which were not properly distinguishable from the general expenses of the war incurred by the United States; finally, by a majority of three to two, it was decided that no compensation under this head be paid at all.

Claims based on Clause 1 still had to be dealt with. The Tribunal awarded the sum, under this head, of 15,500,000 dollars to be paid by the British Government. This amount was handed over to Mr. Hamilton Fish as Secretary of State on September 9th, 1873. The concluding meeting of the Tribunal was on September 14th, 1872. In Revon's words, the pronouncement of the sentence was a solemn public function: "Malgré les dernières manifestations de Sir Cockburn, dont la conduite ne cessa d'être étrange jusqu'à la dernière minute, les arbitres se separaient cordialement après un discours éloquent où le Comte Sclopis exprimait des veux ardentes pour que Dieu inspirât à tous les gouvernements la pensée constante et efficace de maintenir ce qui est le désir immuable de tous les peuples civilisés, ce qui est dans l'ordre des interêts moraux, ainsi que dans celui des intérêts matériels de la société, le bien de tous les biens, la paix!"[1]

The award was a remarkable document. To supplement our analysis of the Alabama incident, I shall quote the paragraph in it relative to that particular vessel.

"And whereas with respect to the vessel called the 'Alabama,' it clearly results from all the facts relative to the construction of the ship, at first designated by the number '290,' in the port of Liverpool, and its equipment and armament in the vicinity of Terceira through the agency of the vessels called the 'Agrippina' and the 'Bahama,' despatched from Great Britain to that end, that the British Government failed to use due diligence in the

[1] "In spite of some final demonstrations by Sir Alexander Cockburn whose conduct continued to be strange until the last moment, the arbitrators separated cordially after an eloquent address by Count Sclopis in which he expressed the ardent wish "that God would inspire all the Governments with a firm and efficient desire to maintain what is the immutable object of all civilised peoples, and also, in the moral and social interests of society, the greatest of all blessings, peace."

perfomance of its neutral obligations; and especially that it omitted, notwithstanding the warnings and official representations made by the diplomatic agents of the United States during the construction of the said number '290,' to take in due time any effective measures of prevention, and that those orders, which it did give at last for the detention of the vessel, were issued so late that their execution was not practicable . . .

"And whereas the Government of Her Britannic Majesty cannot justify itself for a failure in due diligence on the plea of insufficiency of the legal means of action which it possessed . . ." the tribunal makes the award.

We must conclude by quoting the anecdote of Frederick Passy about the indemnity. "Peu de temps," he writes, "après cette solution, l'ambassadeur de la reine Victoria, abordant le minister des Etats-Unis, lui dit en souriant: M. le Ministre, est-ce que mon pays n'a pas une petite dette envers le vôtre? Si vous vouliez, nous pourrions régler cela avant déjeûner. Sur quoi, l'ambassadeur remit au ministre un petit chèque de 15,500,000 dollars et il est permis de penser que l'ambassadeur et le ministre déjeûnèrent ensemble de meilleur appétit, s'étant débarassé l'esprit d'un poids aussi lourd."[1]

Great Britain, indeed, had shown to the civilised world an example of self-control and moderation and acute sense of wrongdoing that we, who are her children, should be proud to remember. Revon's peroration is worthy of quotation. Speaking of the Hôtel de Ville at Geneva, he says, "Nul homme de droit n'y entre sans émotion: car c'est là que fut résolue une des grandes difficultés du siècle, grâce au

[1] "Some time after this award, the Ambassador of Queen Victoria approaching the United States minister said to him with a smile, 'I think, sir, my country has a little debt to discharge to yours. We can put it right, if you don't mind, before dinner,' and thereupon the Ambassador handed him a little cheque for 15,500,000 dollars, and one may surmise that both dined with excellent appetite after getting rid of such a heavy weight."

simple bon sens de cinq hommes raisonables; c'est sur ce bureau que trois ou quatres écritoires empêchèrent des flots de sang de couler : c'est sur ces bancs que la foule pressée acclama la victoire de la justice sur la force ; c'est enfin tout à côté, sur la hauteur légendaire de ' la Treille ' que la salve de canon du 14 septembre, 1872, annonça le prononcé de la sentence et que, pour une fois, cette gueule de bronze fut la bouche qui jeta au monde la voix du droit."[1]

The San Juan Water Boundary dispute was referred to the Emperor of Germany, who rendered an award favourable to the United States on October 21st, 1872.

A mixed commission was appointed to deal with the third question, viz., the settlement of claims of British subjects against the United States and conversely, arising from injuries to persons or property during the Civil War from April 17th, 1861, to April 9th, 1865. Three persons formed the board, appointed by three governments—United States, Great Britain, and Spain.

The fourth arbitration under the Treaty of Washington, to see if any compensation was due to Great Britain for privileges accorded by that treaty to the United States in the northern fisheries, was also resolved by a mixed commission of three persons, the last one being nominated, this time, by the King of the Belgians. It met at Halifax, June 15th, 1877. A few months later it rendered an award to which the American commissioner dissented. Great Britain was to receive 5,500,000 dollars. Despite discontent in the States, our example earlier in the decade was sufficient to secure the £1,000,000 being paid over.

[1] "No student of law enters it without emotion, for there was solved one of the great difficulties of the century, thanks to the simple good sense of five reasonable men : it was two or three desks in the bureau that prevented rivers of blood from flowing, it was on these benches that a dense crowd acclaimed the victory of justice over force, and finally, it was just near by upon the legendary height of "la Treille" that a salvo of cannon on September 14th, 1872, announced the pronouncement of the sentence, and for once this throat of bronze was the mouth that cast abroad the voice of law."

There was a treaty concluded on the 29th February, 1892, whereby some difficulties with regard to the protection of seals in the Behring Sea was submitted to a court of arbitration which sat in Paris. The commission was one of seven members, France, Italy, and Norway and Sweden, each being asked to provide one member in addition to the two nominated by each of the contracting parties. A mixed award was given, partly for and partly against both sides. Great Britain was awarded damages of 425,000 dollars, which were paid.

Between Canada and the United States, an agreement was arrived at in 1898 for the creation of an Arbitral Joint Commission, to consider all subjects of controversy between the United States and Canada, and to frame a treaty, between the British Government and the former, for the adjustment of these differences. The Commission numbered ten—five from each side. Lord Herschell was made president at the first meeting which agreed to discuss the following : (1) Behring Sea Fisheries ; (2) the Fisheries on the Atlantic and Pacific Coasts ; (3) the determination of the Alaskan boundary ; (4) to arrange for the transit of bonded merchandise ; (5) " alien " labour laws ; (6) mining rights ; (7) the readjustment of customs duties ; (8) to revise the agreement regarding the presence of warships on the Great Lakes ; (9) the better defining of the frontier ; (10) extradition ; (11) wrecking and salvage rights. After the death of Lord Herschell, the commission discontinued its sittings, and the work was handed over to the negotiations of the diplomatists of both countries.

After a considerable amount of friction and temporary expedients, on January 24th, 1903, a Convention was signed at Washington, appointing a Mixed Commission to " consist of six impartial jurists of repute," appointed jointly and equally by the parties. The Foreign Office in London was

the first place of meeting. Lord Alverston, Sir Louis Jette, K.C.M.G., and Mr. Allen Aylesworth, K.C., of Toronto, were the English representatives.

The award signed by a majority of the members—the Canadian members protesting—was rendered on October 20th, 1903. The award was greatly in favour of the United States, which naturally made it very unpopular in Canada, though it was loyally accepted.

Such, then, are the instances of international arrangement, between the United States and our own country. We must necessarily reserve the conclusions to be drawn, but meanwhile, it is worth emphasising the fact that in no single case—with only one notable exception—has the difference to be solved, been in any way dangerous to the peace of the countries concerned. This remark is merely interpolated to controvert the opinion that seems to be held that every instance of arbitral arrangement means another war avoided. By no means; each decision is a means of removing some little deadlock, some little irritation, some vague delimitation and similar hitches in international relations. So frequently may these be expected that there is reason to regret the non-ratification of Mr. Olney and Lord Pauncefote's permanent treaty, which would have obviated the necessity of continually having to appoint commissions with all the consequent trouble and expense.

The origin of this idea was contained in a resolution of the Senate of the United States on February 14th, 1890. "That the President," it said, "be and is hereby requested to invite from time to time, as fit occasions may arise, negotiations with any government with which the United States has or may have diplomatic relations, to the end that any differences or disputes arising between the two governments, which cannot be adjusted by diplomatic agency, may be referred to arbitration, and be peaceably adjusted by

such means." On July 16th, 1893, the British House of Commons cordially received this resolution and expressed the hope that "Her Majesty's Government will lend their ready co-operation to the Government of the United States." Hence communications were opened, and from the first the object in view was the conclusion of a permanent treaty of arbitration. Sir Julian Pauncefote opened the negotiations, but for over a year the matter dropped. On March 5th, 1896, Lord Salisbury sent his Ambassador fresh instructions, in which are the following significant passages:—"On both sides it is admitted that some exceptions must be made. Neither Government is willing to accept arbitration upon issues in which the national honour or integrity is involved. But in the wide region that lies within this boundary, the United States desire to go further than Great Britain . . . it would be wise to commence with a modest beginning." He enclosed a draft of a treaty. Mr. Olney replies, April 11th, 1896, and complains that the treaty "seems to be so cautiously restricted as hardly to cover other than controversies which, as between civilised states, could almost never endanger their peaceful relations." He proposed substantial alterations, with the object of widening the scope of arbitration, and, in Mr. Olney's own words, "to make all disputes, *primâ facie*, arbitrable, it being reserved to each Government to displace the jurisdiction by a vote of Parliament." He wished also to make a vote of four to two take effect instead of five to one, as Lord Salisbury had proposed.

A further set of letters produced the treaty, as it was published. "The Senate of the United States," laconically says Mr. Moore, "in the exercise of its constitutional functions, declined to give, by the necessary concurrence of two-thirds of the Senators present, its advice and consent to the exchange of the ratifications of the treaty. It is

understood, however, that the subject of a permanent treaty of arbitration between the two nations is still under consideration."

The procedure it was to make use of is noteworthy. "Art. III.—Each of the High Contracting Parties shall nominate one arbitrator, and the two arbitrators so nominated shall, within two months of the date of nomination, select an umpire." "Art. V.—Any subject of arbitration described in Article IV. (restrictive) shall be submitted to the tribunal provided for by Article III., the award of which tribunal shall, if unanimous, be final; if not unanimous, either of the contracting parties may, within six months from the date of the award, demand a review thereof. In such case, the matter in controversy shall be submitted to an Arbitral Tribunal consisting of five jurists of repute, no one of whom shall have been a member of the tribunal whose award is to be reviewed, and who shall be selected as follows, viz. :—two by each of the High Contracting Parties and one, to act as umpire, by the four thus nominated and to be chosen within three months after the date of their nomination."

One more Article must be quoted. "This treaty shall remain in force for five years from the date it shall come into operation, and further, until the expiration of twelve months after either of the High Contracting Parties shall have given notice to the other of its wish to terminate it."[1]

It is pleasing to note that Lord Pauncefote, who came within an ace of success in this instance, had the honour and distinction of opening that section of the labours of the Hague Conference which has constituted a landmark in history, viz., the establishment of a permanent court of arbitration.

[1] J. B. Moore. "Arbitrations to which the United States has been a Party." Vol. 1, p. 989.

To conclude our detailed review of arbitral instances in 19th century, we will note one remarkable instance that comes from the East. In the year 1875, some Japanese citizens were murdered by the Chinese upon the Island of Formosa. Diplomacy could not arrange the matter and the two nations were on the verge of war. The Cabinets of London and Washington took up the task of inducing the two Eastern Powers to submit to arbitration. Fortunately they were successful: the dispute was referred to Sir Thomas F. Wade, the British Minister at Pekin. He promulgated his award on October 31st, 1874. The Chinese government was assessed for an indemnity of 100,000 taels to be paid to Japan as reparation for the outrage. This award was accepted and by a treaty of the same date, for the evacuation of the island, provision was made for carrying out the articles of it.

Before summing up the work of the century, to keep us from indulging any excessive hopes upon the instances recounted, I quote the criticism of Valmigère. It is overdrawn, undoubtedly, but less on the side of detraction than Revon and the others on the side of extravagant eulogy. He has been shortly describing a few instances and breaks off thus . . . "mais pourquoi continuer une énumération fastidieuse? Les plus célèbres arbitrages ont-ils réglés de plus vastes questions? L'arbitrage de Genève après l'affaire de l'Alabama, outre une question d'indemnité, a étudié sans doute les droits des neutres. Il a fixé certains points encore discutés. Mais les règles fondamentales de la neutralité avaient été étudiées et posées bien avant le procès de Genève : et malgré ce procès, si, dans l'avenir une nation est assez forte pour imposer aux neutres sa volonté, et violer par conséquent ces règles, nul doute qu'elle ne le fera. Et l'affaire des pêcheries de Terre-Neuve, et celle de la mer de Behring? Dans la première il s'agit de déterminer si les

Français ont le droit de saler les morues à tel endroit de la côte de Terre-Neuve ou à telle autre, et dans la deuxième il fallait étudier, outre quelques passages obscurs de vieux traités, si les phoques sont des animaux sauvages ou domestiques''[1]—a delicious fragment of irony, which teaches a real lesson. Let us be candid and we must allow that often we cannot find much to greatly wonder at in these "triumphs of arbitration"—that seems to have become a stereotyped phrase and is significant of the systematic praising and eulogising that distorts arbitration from its true level, and vitiates the work of historians whose object should be the truth, the whole truth and nothing but the truth.

A road has now been driven through the jungle and it is possible to appreciate a more or less summarised result. Figures generally convey but little meaning; graphs and diagrams here are out of the question, but I have counted the instances of arbitration in Dr. Evans' Pacific Settlements and give them if only to show how impossible it is to go thoroughly into every case; indeed, the ground that has just been covered, with very little more, has provided Bassett Moore with material for six huge tomes such as only a jurist could conceive, not to say write.

It is to be noted that these figures include all species of

[1] "Etude de L'Arbitrage." Paris 1898. "But why continue this wearisome catalogue? Have the most celebrated arbitrations regulated the vastest questions? The Geneva Arbitration after the Alabama affair, besides a question of indemnity, studied the right of neutrals, it is true. It decided certain disputed points. But the fundamental rules of neutrality had been studied and laid down before the inquiry at Geneva, and, despite its rules, if, in the future, a nation is strong enough to impose its will upon neutrals and thus violate these rules, there can be no doubt but that she will do it. But what of the Newfoundland Fisheries and the Behring Sea? In the first case the question was whether the French had the right to salt their cod in this district or that upon the Newfoundland coast, and in the second there had to be studied, over and above some obscure passages in old treaties, the question as to whether seals are savage or domestic animals."

arbitrations, mixed commissions, etc. The Allied Powers have been parties to thirty cases, no fewer than fourteen of which were in the years 1814-15, Afghanistan, ten; Argentina, fifteen; Austria Hungary, forty-seven; Baden, three; Bakhatla, two; Bakwena, three; Bamangwato, three; Bungwaketse, one; Barolong, two; Basutoland, one; Bavaria, eleven; Belgium, seven; Beluchistan, one; Bolivia, nine; Brazil, nineteen; Burma, one; Buenos Ayres, one; Bulgaria, ten; Burma, one; Canada, two; Cape Colony, one; Central America, one; Chili, thirty; China, eight; Colombia, sixteen; Gambia, one; Congo Free State, nine; Costa Rica, six; Denmark, nine; Eastern Roumelia, five; Ecuador, eleven; Egypt, seven; Abyssinia, four; France, one hundred and five; Germany, thirty-eight; Great Britain, one hundred and sixty-four (one or more with practically every civilised nation on the face of the earth); Greece, fourteen; Guatemala, nine; Hanover, four; Hawaii, one; Hayti, eight; Hesse Cassel, one; Hesse Darmstadt, seven; Holland, fifteen; Honduras, five; Hungary, one; Italy, twenty-three; Japan, three; Kelat, one; Lahore, one; Liberia, two; Lippe-Detmold, one; Mexico, sixteen; Medina, four; Moldavia, six; Monaco, two; Montenegro, six; Morocco, three; Muscat, one; Naples, one; Nassau, one; Natal, one; New Brunswick, one; New Granada, two; Nicaragua, ten; Norway and Sweden, five; Oldenburg, one; Ontario, one; Orange Free State, two; Paraguay, four; Parma, two; Persia, thirteen; Peru, twenty-six; Poland, four (all in 1815); Portugal, twenty-six; Prussia, forty; Rhenish States, four (all in 1830); Roumania, three; Russia, forty-two; Salvador, four; San Domingo, four; Sardinia, thirteen; Saxe-Weimar, one; Saxony, six; Schaumburg-Lippe, one; Servia, eight; Siam, five; Spain, twenty-two; Switzerland, six; Transvaal, eleven; Tunis, one; Turkey, fifty-six;

Tuscany, one; Two Sicilies, one; United States of America, ninety-six; Uruguay, two; Venezuela, twenty-seven; Wallachia, six; Westphalia, one; Würtenberg, three; Zanzibar, one; and Zululand, two.

In as much as it takes two to make a reconciliation, as well as to make a quarrel, the sum total of the above figures would have to be divided by two to get the actual number of pacific solutions of differences. I have presumed upon the goodness and enthusiasm of the reader in inserting such a catalogue, but it fulfils two purposes which could not have been carried out in any other way. It conveys by its wearisome length some idea of the distribution of this pacific machinery; indeed, if we reflect for a moment and consider the intricacy of modern international relations, we cannot fail to realise that, in the ordinary course of things, hitches will occur, as in even the best organised factory; and secondly, which is more important, that the presence of means to mend these small breakages is normal, and therefore no great matter either for congratulation or enthusiasm. For instance, we must not stand back and look at ourselves in wonderment and admiration because France and Chili did not go to war, but chose an arbitrator because M. Charles Frérant had a claim against the latter for non-fulfilment of contract. It is essential to recognise the fact that the huge majority of these cases are of the nature of the one just cited; a fact which leads to our second point, that, *â priori*, each case is not another war avoided, as many peace advocates suppose. It cannot be so. Great Britain could not have fought one hundred and sixty-four wars in a century in addition to some of those foolish ones she actually did engage in.

Having exhausted the lessons that the actual figures teach, it is permissible to catalogue, or rather classify, the arbitrations of the century. The classification given is that

of Kamarovsky, which has received Revon's benediction as satisfactory.

Arbitral judgments may, then, after their "objects," be divided into the following four principal groups :—

1. *Violations of the rights of Subjects of Foreign States.*—*e.g.*, *(a)* The arrest of the English Officers of the ship "La Forte" in 1862. *(b)* The case of Captain White in 1864. *(c)* The murder of a Japanese by Chinese subjects in 1875, and so on.

2. *Claim for damages owing to violated interests.*—*(a)* The case of the slaves in 1822, between U.S.A. and Great Britain. *(b)* The case of the slaves on board the "Creole"—We have analysed this instance above—(*c*) The question of the prizes "Lizzie Thompson" and "Georgiana" in 1862. *(d)* 1871, the affair of "Montyo." *(e)* 1875, the liquidation of the accounts of the fleets of Chili and Peru, and so on.

3. *Violations of Neutrality.*—*(a)* 1843, the question of Portendic. *(b)* 1852, Louis Napoleon arbitrator—the affair of "General Armstrong." *(c)* 1872, the "Alabama" case.

4. *Territorial Disputes.*—*(a)* 1831, the River "St. Croix" affair. *(b)* The Bulama case. *(c)* 1875, the Delagoa Bay Question. *(d)* The San Juan affair in 1872.

The classification is at once elastic and useful. It enforces, too, one great point which our two authors have not failed to note, inasmuch as it in itself contains the nucleus of the whole problem. Kamarovsky sums up thus : "Quant aux objets de l'arbitrage, ils se distinguent, en général, par l'absence d'un véritable caractère politique et présentent principalement un intérêt matériel."[1] "Yes,"

[1] "As to the objects of arbitration they are generally distinguished by the absence of a true political character and principally exhibit a material interest."

says Revon, "that is so." "Rien de plus naturel: car nous l'avons dit, l'arbitrage facultatif, par cela seul qu'il présente ce caractère, ne saurait constituer une juridiction regulière et habituelle. Les Etats y ont recours quand il leur plaît, c'est à dire, d'ordinaire quand la question ne blesse pas les préjugés nationaux: il le repoussent au cas contraire. Cette bienfaisante pratique n'aura donc toute son efficacité que le jour où elle sera devenue ordinaire et obligatoire, grâce à une institution plus parfaite, celle des traités d'arbitrage permanent."[1]

This is an excellent bit of pleading, which leaves one in the dark, as to the logical process towards the conclusion. The argument is, Objects of extant arbitrations seldom include political interests: why? Two possible answers—(1) Because political interests are not objects for arbitrations; (2) Because arbitration itself is badly organised and needs adjustment. Revon skips number one, and, with the help of number two triumphantly proclaims the panacea—permanent treaties of arbitration.

It is now possible to see where the issue really lies and to realise the difficulty which Revon has slurred. Is it indeed the facultative character of arbitration that restricts its use? The answer, after reflection, is "in a measure, yes." When Lord Salisbury was in negotiation through Lord Pauncefote with Mr. Olney, he was, as we saw, exceedingly cautious in extending the scope of the treaty. Eventually, and in my opinion for the better, his draft was amended to give extension to it, though that principle, which is known as compulsory arbitration, was not admitted—

[1] "Nothing more natural. We have already said that facultative arbitration in so far as it presents this character alone, cannot establish a regular and habitual jurisdiction. Nations have had recourse to it, when they pleased, that is to say, generally when the question does not hurt national prejudices. They reject it when the case is otherwise. This beneficial practice then will not gain its full efficacy until it has become usual and obligatory, thanks to a more perfect institution—permanent treaties of arbitration."

reservations of an important character obtaining to the very end.

The second question we must ask, to keep an impartial standpoint, is "Are there any political interests which cannot be submitted to arbitration?" This is the most difficult problem of our subject. First of all "cannot" may mean several things. Political interests, we have seen, "are not" submitted to courts; there does not seem much likelihood that they will be. Hence the question must be amended to "Ought political interests to be submitted to arbitral courts?" The answer of the "friends of peace" cannot be doubted. It must be inferred from their condemnation of all war to be in the affirmative. The solution must come from the moralists, for it is in their province. The most illuminating discussion of the point at issue is in the International Journal of Ethics where Mr. Robertson and the late regretted Professor Ritchie waged a sharp battle. It is impossible here even to outline the argument. The point, however, to be noted is that a conclusive and final answer cannot be found to unite the conflicting views of these two able controversialists. To whatever side the reader would incline, whether to the broader evolutionary ethics of Professor Ritchie or the narrower and more logical opinions of Mr. Robertson, would depend upon his mental attitude more than upon the actual course of the discussion. Writers who have never taken a side in this controversy, however, have sounded warnings against too ready submissions to the awards of a court, however perfectly constituted.

It will be sufficient if it has been shown that Revon's method does not solve the greatest problem in the scope of arbitration but only ignores it. It will be our task later on to select the most probable answer to the question we have been discussing.

From the point of view of procedure and external form these judgments fall into two classes. The awards are rendered either by a mixed commission—*i.e.*, whenever several persons sign the document—or by a single individual. Sometimes several persons may form the court, without it being a mixed commission, but this is very rare, *e.g.*, the "Cour de cassation de France," chosen in the "Phare" affair in 1879. Sometimes, too, these two types may develop. When a mixed commission has come to a deadlock and an umpire is chosen, over and above the commissioners themselves, to smooth their disagreements, there results a confusion of types. In like manner an arbitrator may yield to a mixed commission; this is fairly common especially in such a case as a claim for damages; the arbitrator, after deliberating upon the facts, gives an award embodying his conclusion, and the mixed commission fixes the amount to be paid.

There can be little doubt that in Revon's words the procedure "demeure fort vague"; but such a point needs no over-emphasis. It is certain that such difficulties with regard to form, once felt as seriously inconvenient, will find a solution, without an inordinate amount of heart-burning or movement of troops. Indeed, the whole future of arbitration rests, as we shall see, *outside* itself, and any internal difficulties, such as those just mentioned, may easily be eliminated; the anxious question is, will arbitration as a whole survive. If that answer be in the affirmative, all is well.

CHAPTER XI.

The Theory of Arbitration.

It is necessary in this chapter again to depart from the conventional handling of this portion of the subject. There are, in my opinion, ample reasons for such a decision. Dr. Evans in his collection of theorems and theories upon arbitration occupies nearly eight hundred pages in merely citing the actual projects, without explanation or elucidatory writing, except of the most meagre kind. It would be possible to classify and summarise these, and such, in part, is the plan to be pursued, but not until the ground from the "grand dessein" to the middle of our modern period has been traversed. The early portion, between the limits indicated, will be dealt with, not in a condensed form, but in several detailed "aperçus" of the most outstanding of the various projects. It is, of course, inevitable that much material must be sacrificed in this process, but the advantage gained is no mean one—a real and living acquaintance with the ingenious plans of some of the sharpest intellects of Europe, in place of a dead and useless, though complete, catalogue of meaningless names and dates.

I.

I. The Grand Dessein of Henry IV.

The sole documentary evidence for this unique federal scheme is from the hand of Sully. He was, as we know, the chief minister of Henry IV., and therefore, not only the most likely person to know that monarch's scheme, but also

the fittest to hand it down to posterity. So it would seem; but history is sceptical. The plan has, especially by the Germans, been characterised as a mere fiction of Sully's brain, though its value would be none the less for that. There seems, however, but little doubt as to its genuine historical character; in the course of the study of it we shall quote contemporary documents which preclude the idea that the whole scheme was a hoax.

The circumstances which surround the publishing of Sully's Memoirs, too, are material for the sceptic. Henry IV. died in 1610. Sully died a few years later and left two volumes completed, along with material for the rest. Laboureur and his secretaries finished and published the work in 1638, which was fifteen years after the publication of a similar project by Emeric Crucé. In any case Sully undoubtedly had more to do with it than he alleges, and we see his hand throughout the scheme. Before describing the project, he enters into a short criticism of French monarchs, which will show the mental calibre of the man. "We may find a thousand things worthy to be admired in Philip Augustus, Saint Louis, Philip le Bel, Charles Le Sage, Charles VII. and Louis XII. How pitiful that so many good or great qualities were not founded on other principles of policy! How dearly would one like to call them kings, if only one could conceal the miserable condition of their subjects!"

His picture of France under Louis IX. is a bold, vivid and singularly modern sentence. "For what with the exorbitant taxes, imposed to satisfy his pious zeal for an ill-judged and ruinous crusade, the vast sums transported to far-away countries for the ransom of prisoners, the many thousands of citizens sacrificed, and the many illustrious houses extinguished, France was overwhelmed with general mourning and with a sense of universal calamity." Coming

closer, he affirms that, "the slightest knowledge of our history is sufficient to convince anyone that France had no real peace from the reign of Henri VIII. to the peace of Vervins in 1598." This period is nearly four centuries, and Sully is unwilling to concede either the wisdom or the righteousness of such prolonged conflicts, though he concedes that "several of these were sometimes in such circumstances as rendered war just and even necessary."

Such was the man who recounts the "grand dessein" to us. "We now see," he begins, "the nature of the scheme which Henry IV. was going to put into execution, when it pleased God to take him, too soon by some years for the happiness of the world"—note here, en passant, the absolute, sheer conviction that the scheme was possible. Péréfix, the historian, shares that conviction and says positively it would have been carried.

To resume, Henry, through diligent study of history, undertook a new policy which differed entirely from that of previous monarchs, inasmuch as his desire was to make France contented and prosperous, and he cherished no ambitious plans of European conquest. Sully says that Henry approached him on the matter of a federation and that his own cold, cautious and unimaginative temperament prevented him from seeing the beauty of the scheme at first; he was convinced it meant huge wars and ruinous expenditure. Eventually Henry won him over. All this comes from the extant "memoirs," and the foregoing details are the only portion of the account that seems unlikely; as we have said the probability is that Sully took the initial steps in the whole affair.

Henry and Sully no less than Elizabeth of England, saw that the House of Austria must be reduced, if they were to maintain the integrity and independence of their country. Consequently the "grand dessein" was broached to

Elizabeth. Sully had an interview with her in 1594, and writes, years after, "Elle me rappela ce qui s'était passé à ce sujet en 1596 entre le roi et les ambassadeurs anglais et hollandais, et me demanda si ce prince ne persistait pas toujours dans les mêmes sentiments, et pourquoi il différait tant à mettre la main à l'œuvre."[1]

His hopes and her hopes of the scheme he conveys in the continuation of this passage. "Je la trouvai fortement occupée des moyens de faire réussir ce grand projet; et malgré les difficultés qu'elle imaginait dans ces deux points principaux, la conciliation des religions et l'égalité des puissances, elle me parut ne point douter qu'on ne put le faire réussir . . . Elle disait encore qu'il aurait été à souhaiter qu'il eut pu s'exécuter par toute autre voie que par celle des armes, qui a toujours quelque chose d'odieux; mais qu'elle convenait que du moins on ne pouvait guère le commençer autrement."[1] One wonders if Elizabeth actually said these things; they are of great interest.

"Une très grande partie des articles," Sully continues, "des conditions et des différens arrangements est due à cette reine, et montre bien que du côté de la pénétration, de la sagesse et de toutes les autres qualités de l'esprit, elle ne cédait à aucun des rois les plus dignes de porter ce nom."[3]

[1] "She reminded me of what had passed on this point between the King and the English and Dutch Ambassadors in 1596, and asked me whether the prince still persisted in the same sentiments, and why he hesitated so long to put his hand to the work."

[2] "I found her greatly preoccupied with the means to make the noble project succeed, and in spite of the difficulties she imagined in the two principal points, the reconciliation of the religions and the equality of the powers, she appeared to me to be in no doubt as to the possibility of its success. She said also that it could be wished that it were possible to carry it out by other means than by war, which is always somewhat hateful, but she agreed that at least one could not begin it in any other way."

[3] Many of the articles, conditions and various arrangements are due to this queen, and show that in penetration and wisdom, and all other mental qualities, she yielded to none of the kings—even those most worthy of the name.

The first blow to the scheme was the death of Elizabeth; though meanwhile new allies were found in Germany and Italy. The nucleus of the movement was a treaty, the superscription of which indicates its importance. "A Treaty of Alliance and League between Henry the IV., King of France, Elizabeth, Queen of England, and the United Provinces of the Low Countries, to defend themselves against Spain. Done at the Hague, the 31st of October 1596." The body of the document only arranges for a meeting "to deliberate and resolve upon the means to be made use of, in order to attack the said King of Spain"—no little proof of the genuineness of the Grand Dessein. Everything was going well. James I. continued the policy of Elizabeth, and, according to Rousseau, the scheme made great progress on the continent.

Ravaillac's dagger ruined the project, which derived all its prestige from Henry IV. Now to the details of it.

Henry wished to organise a "république très chrestienne." It was to consist of fifteen sovereignties which should be so constituted as to preclude any from being a menace to the rest. Hence, as Europe was far from such a utopian equilibrium, certain alterations would have to be made. Those in North Germany "devaient être faits à l'arbitrage des rois de France, d'Angleterre et de Lombardie et de la république de la Venise."[1]

Arbitration, however, would not suffice to humble the House of Austria. Hence, by force of arms, she was to be dispoiled of all her possessions in Italy, Germany, and the Low Countries, Spain alone was to be her future sphere. This harsh war is the only false note in the whole scheme. The first task of the new republic was to expel the infidels from Europe. This hinged upon the treatment of religion

[1] "Must be made subjects of arbitration by the kings of France, England, Lombardy and the Republic of Venice."

in the project. Only three were to be recognised, the Roman Catholic, the Reformed, and the Lutheran. The passage in which Sully defends this part of the scheme is noteworthy.

"As each of these three religions is at the present time established in Europe, so that it does not appear that anyone of the three can be destroyed, and as experience has shown the uselessness and the danger of any such attempt, there is nothing better to do than to leave all three in existence, and even to strengthen them, in such a way, however, that this indulgence should not in the future open the door to all sorts of capricious imagination in the way of false dogmas which should, on the contrary, be carefully stamped out at their very birth. God, by visibly supporting what the Catholics are pleased to call the new religion, teaches us to behave in this way, which is, in conformity with the precepts and the examples of Holy Writ."

For the expulsion of the Turks and for common defence a federal army would have to be organised. Each prince was to contribute according to his existing power and influence: the total was to be 270,000 foot, 50,000 horse, 200 cannon, and 120 gallies. It is worthy of note that Sully appreciates the burden of armaments. "This force is so inconsiderable," he says, "compared with the forces which the princes and states of Europe usually keep on foot to overawe their neighbours, or their own subjects, that if it had been necessary to maintain it constantly, it would have occasioned no inconvenience."

The fall of Austria, of course, meant the fall of the Empire; this, however, according to the Dessein, was to be reconstituted and made the prize of the legitimate ambitions of all the princes in the new republic. The consequent alterations in the map of Europe were considerable. The Habsburgs' possessions were to be divided between Bavaria,

Wurtembourg, Hungary, Bohemia, and Venice. Moravia and Silesia were with Bohemia to form an elective kingdom. Hungary, as the bulwark against the Turk, was to be strengthened with the Archduchy of Austria, and with Carinthia, Carniola, and Styria. The king of this reconstituted kingdom was to be elected by the Pope, the Emperor, and the Kings of England, France, Denmark, Sweden and Lombardy. The Pope was to have, in one form or another, all Italy, with the exception of the Duchy of Savoy, which was to be made into the Kingdom of Lombardy.

It is of the utmost importance to observe, for the true appreciation of the scheme, that neither France nor England was to be aggrandised. Neither was to have an increase of territory, nor in any other way to rise upon the fallen House of Habsburg.[1]

The crowning felicity of the plan was the General Council. This was evidently modelled upon the Delphic Amphictyony. It consisted of a certain number of commissioners, ministers or plenipotentiaries from all the powers of the Christian Republic, assembled as a permanent Senate to deliberate upon divergent interests, to pacify quarrels, to bring to the light and watch over the civil, political and religious affairs of Europe, whether internal or external. The number of members of the Senate was fixed at sixty-six; four were to be appointed by each of the following authorities: The Emperor, The Pope, the Kings of France, Spain, England, Denmark, Sweden, Lombardy and Poland and the Republic of Venice. The others were apportioned two representatives each. The whole Senate was to be rechosen every three years. The place of meeting might be fixed or ambulatory; in the latter case fourteen towns were selected as the most suitable, being in central

[1] The spelling of Emil Reich, a native Hungarian.

Europe. An alternative plan was to divide the whole Senate into parts of twenty-two members each; there was in that case to be an arrangement whereby Paris, Trent and Cracow should be the places of meeting. Local convenience was to be suited by the establishment of numerous subordinate councils or sub-committees with delegated powers. "But whatever," writes Sully, "the number and form of these special councils, it was of the utmost utility that they should have recourse by appeal to the Great General Council, whose decisions should have the force of irrevocable and unchangeable decrees, as being considered to emanate from the united authority of all the Sovereigns, pronouncing as freely as absolutely."

Such was the Grand Dessein. Whatever its origin or source, in Clarke's words, "its merits can hardly be exaggerated. The Grand Dessein must be considered as the most comprehensive and attractive, if not the most influential and important of all modern proposals for the reconstitution of society." This must form an excuse for the lengthy and detailed account that has been given.

II.

II. Émeric Crucé and the Nouveau Cynée.

The German critics are not inclined to regard Henry IV.'s project as genuine because Sully may have obtained his inspiration from Crucé, nor yet Crucé's in as much as he may have borrowed from Sully. In my humble opinion, the two plans are what they profess to be, though the Grand Dessein may have received a good deal of polishing long after its original promulgation.

It was in 1624, one year previous to the appearance of Grotius' great work, "De Jure Belli et Pacis," that "Le Nouveau Cynée" was published at Paris. Lacroix—to give him his right name—seems to have been a dreamer of

beautiful visions, a soul of naïve purity and grace. "Why," he asks, "should I wish evil to Englishmen or Spaniards? I cannot when I consider they are men like me." His political system is not elaborate. Human society is a body all of whose members have a common sympathy, so that it is impossible that the sickness of the one shall not be communicated to the others. That conception and the conviction that "the evil passions of princes are the real causes of war," furnish him with inspiration for his scheme. He wished to establish a federation with its centre at Venice, though this was only part of his scheme of a Universal Union.

Clarke[1] quotes his peroration and calls it one of sublime faith and simple grandeur. "S'il ne sert de rien, patience. C'est peu de chose de perdre du papier et des paroles. Je protesterai en ce cas comme Solon l'avoir dit et fait ce qui m'a été possible pour le bien public."[2] This during the Thirty Years' War. One is glad to think that the glimmer of light, which again begins to spread over Europe after the Peace of Westphalia, was kindled in part by Sully and Grotius, and last, but not least, faithful Lacroix.

III.

III. William Penn and his European Diet.

This project of Penn's was a child of the French scheme published in Sully's Memoirs. Indeed that Quaker statesman explicitly hangs his own work upon the Grand Dessein, and disclaims any special honour or praise for his Essay. "So that," he says, "I have very little to answer for in all this affair, because if it succeed I have so little to

[1] "Arbiter in Council"—Federation.

[2] "If it is useless, patience. It is a little matter to lose paper and words. In that case I shall protest, as Solon did, that I have said and done all I could for the public welfare."

deserve; for this great king's example tells us it is fit to be done." Penn wrote his essay in retirement in Pennsylvania; his design was a practical one, and he disclaimed any utopia-preaching. His work is divided into four sections.

Section I.—Of Peace and its Advantages—he points to the state of Europe; it groans for peace; the rich draw in their stock; the poor turn soldiers, or thieves, or starve.

Section II. is devoted to "The Means of Peace," which is Justice rather than War. The calibre of the argument may be judged from, "The advantages that justice has upon war is seen by the success of embassies, that so often prevent war by hearing the pleas and memorials of justice in the hands and mouths of the wronged party."

Section III. has for a title "Government, its Rise and End under all Models."

Section II. said the truest means to peace was justice; this, it is Penn's task in Section III., to show, "is the fruit of good government." It is in the concluding Section —"Of a general Peace or the Peace of Europe and the means of it"—that he expounds his project.

It is of the most elaborate nature: he worked out all details and even anticipated objections, none of which are of a very serious nature. One is that "there will be a great want of employment for younger Brothers of Families, and that the poor must either turn soldiers or thieves."

It is impossible, for want of space, to go into the minutiae of the scheme. The plan was the creation of a permanent Sovereign Tribunal—an International Parliament or Congress, which should exercise judicial functions as well as deliberative and also act as a Committee of Public Safety. The judicial function was the chief feature of the permanent Diet.

Thus William Penn. It is astonishing to find in all his

long scheme no despondent note, no doubt that it would need a miracle to bring about his reform, not even a hint that he considered the day far distant when it should be carried out. As with Lacroix, we come upon this youthful virility of optimistic faith that should put us to shame. All the encouragements of the centuries should at least restore to us the hope, if not the naïve trust, of these early writers.

IV.

IV. L'Abbé de Saint Pierre.

This section is devoted to perhaps the most famous name among the grand "pacifici." He was a writer of huge capacity, full of projects and missions and reforms. "A plan for rendering dukes and peers useful," as well as a "plan for rendering sermons useful," is to be found in his works. Molinari has followed Rousseau in interpreting the famous Abbé to succeeding generations—an obscurity of style and language making his own writings very tiresome.

The year 1712 saw the Congress of Utrecht. Pierre was there in the train of the Abbé de Polignac. The dilatoriness and fussiness of this Congress impressed Saint-Pierre, and he conceived the idea of cementing the peace then concluded into a perpetual one. Working on the basis of the Grand Dessein, he spent four busy years on his "Projet de la Paix Perpetuelle," which, more than Kant's "Perpetual Peace," has remained the typical scheme of its kind. The last volume was published in 1716. Immediately it was circulated by the author to all the Courts of Europe, and we can imagine his anxious waiting for replies. None came. As Cardinal Fleury told him in a now famous sentence "You have forgotten to send missionaries to prepare the hearts of the Sovereigns." We have just remarked upon the splendid optimism of these pacificators. Listen to Pierre. Twenty-five years after he published it, after a quarter of a century

of ridicule had played around it, he affirmed, "My projects will endure: some of them, little by little, will enter into the young minds of those who will one day take part in the government and be able to be of great service to the public; this view of the future has always splendidly repaid me for my present pains."

The Senate of Europe, as Saint-Pierre constituted it, was to consist of twenty-four deputies only. France, Spain, England, Holland, Savoy, Portugal, Bavaria, Venice, Genoa, Florence, Switzerland, Lorraine, Sweden, Denmark, Poland, the Pope, Muscovy, Austria, Courland, Prussia, Saxony, the Palatinate, Hanover, and the Archbishoprics, all being represented by one member each. There is an important fact to be deduced here: Saint-Pierre was proceeding on the best lines when he recognised the equality of nations, which is the principle that was recognised in the meetings at the Hague.

The eleven fundamental articles upon which the whole Convention was based were to be signed, either by the Sovereigns of the countries set forth, or their deputies then at Utrecht. Once the Sovereigns signed this treaty of perpetual union, their representatives should sit in perpetual session and deliberate upon the common concerns of the federate nations. This Senate would furnish any committees of reconcilation that might be needed to settle international friction, while standing committees would deal with all administrative details.

The Conciliation is interesting. The Committee should endeavour first of all to obtain an agreement signed by the parties at variance. In the event of this not being accomplished, the Senate, on the evidence put before them by the Conciliation Committee, should render a judgment, in the form of an Act or Privilegium. This also failing to gain the consent of the contending States, a final decision

would be promulgated by the Senate, which would become the law of the Federation. The sanction was to be the united forces of Europe, which, though each State was not allowed a standing army of over six thousand men, was sufficient to coerce any recalcitrant State.

The philosophic basis of the whole scheme is Utilitarianism, and the greatest guarantee of its permanence was the utility it afforded to all the contracting States.

Rousseau knew and loved the good Abbé's "La Paix Perpetuelle"—indeed he revised it and published it in a more modern form: his verdict we see no need to change: "C'est un livre solidé et sensé et il est très-important qu'il existe."[1] Leibnitz, too, was impressed with the scheme of the "soliciteur pour le bien public," as Pierre was nicknamed. "I have read" he says, "carefully the Project of Permanent Peace for Europe, which the Abbé de St. Pierre has done me the honour to send me, and I am persuaded that such a proposal, taken as a whole, is feasible, and that its execution would be one of the most useful things in the world. Although my support is not worth much, I have thought that my sense of obligation compels me not to withhold it, but to add some remarks of my own for the satisfaction of an author of such merit, who must have had much force of character and firmness to have dared, and to have been able, to oppose with success the crowd of prejudices and the taunts of mockery."

To conclude our account let us quote the eulogy of Jean Jacques: "It seems that this good soul, whose only care was the public interest, measured the pains he bestowed on things wholly by their usefulness, without ever allowing himself to be discouraged by obstacles and without a thought of personal advantage." Yea, truly, St. Pierre has

[1] "It is a solid and sensible work, and it is of importance that it is in existence."

carved for himself, in the Temple of Peace, a place of surpassing beauty.

V.

V. Immanuel Kant—Zum Ewigen Frieden.

It was the Treaties of Basle in 1795 that furnished the direct motive for Kant's essay. He was then in his seventy-first year, and, drawing his inspiration and material from St. Pierre and Rousseau, whose work he knew from end to end, determined to furnish Europe with articles which, if applied to the Europe of his time and ratified at Basle, would make the treaties there concluded the beginning of a perpetual peace.

None knew better than the Konigsberg sage that his scheme was not practical, in the sense of being possible under existing conditions, but we must not regard it as altogether Utopian and visionary. "The Peace Project," says Kuno Fisher in his Life of Kant, "is here brought into connection with a deep-laid system of thought: there is no fanatical extravagance or gushy philosophy: both are foreign alike to the philosophy and character of Kant." It is a significant commentary upon the articles of the scheme, to analyse the Treaty which called it forth: all that the scheme forbids the treaty embodies, and all that the scheme begs for, the treaty refuses.

It is a commonplace among historians to note the sudden fall of Prussia in moral and military prestige after Frederick's death, until Napoleon shamed her into better ways. In 1794 she invaded France—the reactionist bent on crushing liberty. The virile young republic soon vindicated her right to work out her own salvation: her victories made Prussia eager for peace—and such a peace!

The Treaty of Basle recognised France as a republic. Prussia heartlessly abandoned to her the German States on

the left of the Rhine, and, with shameless cynicism, obtained for that good deed a secret article permitting her to annex other German territories. And this was the peace which formed the text for Kant's scheme.

His first section contains the preliminary articles of perpetual peace between States—

I. "No treaty of peace shall be regarded as valid if made with the secret reservation of material for a future war."

II. "No State having an independent existence—whether it be great or small—shall be acquired by another through inheritance, exchange, purchase or donation." This recalls, of course, the famous couplet upon the Habsburgs :

> "Bella gerant alii, tu felix Austria nube ;
> Nam quae Mars aliis dat tibi regna Venus."

Such difficulties as are here noted have not quite disappeared, though the only surviving means that is banned by Kant is purchase. It is not impossible that Germany may purchase Holland in the near future, not, of course, with money, but with material benefits of various kinds. This is no fanciful scheme, but one with which publicists here, in Holland, and in Germany are familiar, as within the sphere of practical politics. Its effect on Europe no one can affirm, but it could not fail to be immense. A German Rhine is a legitimate ambition ; a purchase is a legitimate means of acquiring territory, but the outcome might be of the greatest moment to Europe. Nothing cements union better than a successful war.

III. "Standing armies (miles perpetuus) shall be abolished in course of time"—still a pious wish. The present condition of this project will have to be dealt with in our chapter on the Hague Conference.

IV. "No national debts shall be contracted in connection with the external affairs of the State"—an Article which

would have prevented the Boer War, the Russo-Jap War; indeed all modern wars.

V. "No State shall violently interfere with the constitution and administration of another."

VI. "No State at war with another shall countenance such modes of hostility as would make mutual confidence impossible in a subsequent state of peace: such as the employment of assassins (percussores), or of poisoners (venefici), breaches of capitulation, the instigating and making use of treachery (perduellio) in the hostile State." Every country in Europe pays huge sums to maintain a "secret service," which depends for success upon lying and spying, treachery and crooked dealing.

Section II. contains the definitive articles of a perpetual peace between States—

I. "The civil constitution of each State shall be republican." Hereafter we shall have to note the peaceful tendencies of democracies. Many of the best thinkers make the rise of modern popular governments the best guarantee of future pacific relations.

II. "The law of nations shall be founded on a federation of free States." Kant here joins the great band of federalists.

III. "The rights of men, as citizens of the world, shall be limited to the conditions of universal hospitality." Universal hospitality is still to be realised. Even in Europe there are laws which are hostile to the foreigner, who, under Kant's article, could claim full citizen rights.

Such, with explanatory appendices, is Kant's "Zum Ewigen Frieden."

Before leaving the various schemes for a United States of Europe, and as a support to our general position with regard to arbitration, let us see what Henry Sidgwick has to say with regard to federation. On the last page of his

"Development of European Polity" he says, in conclusion, "I, therefore, think it not beyond the limits of a sober forecast to conjecture that some further integration may take place in the West European States: and if it should take place, it seems probable that the example of America will be followed, and that the new political aggregate will be formed on the basis of a federal polity. When we turn our gaze from the past to the future, an extension of federalism seems to me the most probable of the political prophecies relative to the form of government"—a conclusion that seems reasonable and probable, provided always another 16th century does not make it all to seek again.

The Modern Period:
Classification of the Projects of the XIX. Century.

It is intended in this classification to reject Kamarovsky's double grouping and to adopt Revon's, though it is necessary to point out that Revon's scheme of progression is false. The sequence in the mind is not through facultative arbitration and special tribunals to federation. The process indeed is a reverse one. Revon should have realised and pointed out that it is not for nothing that all the great early theorists were federalists. Indeed, the less modern the writer, the huger his scheme. Let us remember our naïve friend, Emëric Lacroix. He stands first, and has a scheme for binding together the ends of the earth. There is a sudden fall from that to the plan of a United-States of Europe, which holds till to-day, though not now fashionable. The sphere of operations has been still furthered narrowed : one advantage has resulted, viz., greater clearness of thought. This specialisation, however, has gone too far, and the friends of peace have realised that neither arbitration nor diplomacy, mediation, nor good offices, alone, is the sole guarantee of peace, but that each contributes its part in the work of bolstering the pacific relations of nations.

With this criticism we adopt our author's grouping.

I. Facultative International Jurisdiction.

This being actually the *modus vivendi* of Europe during the 19th century—war, of course, in addition—there is no very enthusiastic propaganda for it, but on the other hand there is noticeable, among the jurists and publicists, a feeling

that it is sufficient for the needs of the time. Their position is that nations, which desire peace, are well provided, by arbitration of a facultative nature and by diplomacy, to make their wishes felt. "A quoi bon," then, to struggle for schemes which are as useless as visionary?

Such a view is exceedingly widespread and has, in its fatalistic dress, some little truth at bottom: nations undoubtedly, which desire war will not be held back by any juridical formula: that can be granted, but the converse is far from the truth: the lack of pacific machinery has, if we read history aright, caused war; its presence has prevented it.

One acute writer, Lieber, whom Revon scorns, points out, in the "Revue de droit International," the advantage of facultative arbitration over a permanent tribunal, for the smaller nations. He says, and rightly in my opinion, that unless especial care is taken—which is possible in optional reference—cabals and intrigues, or at least undue influence, can arise round a court of arbitrators in favour of the great powers and to the detriment of the smaller. Why is it that the Hague is chosen, and not Paris or London, for the Temple of Peace? Evidently, to obviate in part this danger.

II. Specialised International Tribunals.

The caution of the people who only think it desirable or possible to establish special tribunals for special cases of international differences and adjustments, falls under Revon's whip, but again undeservedly.

These schemes—all prior, of course, to the Hague Convention—come from an extension of the idea of the Prize Courts and the Mixed Courts in eastern Europe. Jurists of name and fame here feel on firm ground in asking for reform and extension. Bulmerincq, Sir Travers Twiss

and Kamarovsky favour the gradual extension of these mixed jurisdictions.

One of these schemes is rather notable, and will give a clear idea of what these special tribunals would be like. A M. Moynier, in 1872, published a scheme for the founding of an international court to prevent and punish infractions of the Geneva Convention. Not without reason, he was dissatisfied with the purely moral sanction that upheld these conventions for the amelioration of war conditions.

The principal objection is the undermining of the responsibility of the officers, but the scheme is open to many other criticisms.

The best parallel to-day to these special tribunals is the "Commission D'Enquête." Before it nations can come and state each their case, without in any way being bound to abide by the decision. The successful result of the "Dogger Bank" Inquiry is a proof of its value.

III. An International Tribunal—without the Sanction of Force.

The two most salient characteristics of the international tribunal—apart from its lack of sanction—are parallel to the prominent features of the schemes we have just reviewed. The facultative international arbitration is nominally general: in the case of the international tribunal, this universality would become an actual fact. Again the special tribunals furnish an analogy to this class of projects: they are obligatory within the circle of their competence: it is this characteristic which the promoters of the International Tribunal devoutly wish to include in their new *modus vivendi*. The lack of sanction from this point of view is, in the opinion of many jurists, a grave fault, which is liable to render the organisation of such a tribunal

a thankless task : in their view the tribunal would be a dead letter from the beginning.

To resume our account, however. One of the first promoters of such an international court was Jeremy Bentham. The MS. from which these schemes have been printed and given to the world is dated 1786-1789. Hence, in point of time, Bentham comes before Kant : but our associations with the great utilitarian harmonise with a treatment of his plans among the essentially modern authors.

The " Plan for an Universal and Perpetual Peace " was the last of four small essays, the other three of which deal with kindred preliminary subjects. The heart of Bentham's plan was his Common Court of Judicature, composed of two deputies from each State, charged with the maintenance of peace and order in Europe. Perhaps it will be well to quote his own words. " Proposal XIII.—That the maintenance of such a permanent pacification might be considerably facilitated by the establishment of a Common Court of Judicature for the decision of differences between the several nations, although such Court were not to be armed with coercive powers." The most interesting part of the rest of the project is where he indicates actually what sanctions the Court would rely upon. " Its power," he writes, " would consist (1) in reporting its opinion ; (2) in causing that opinion to be circulated in the dominion of each State." But this is not all. " After a certain time, in putting the refractory State under the ban of Europe." He has a wonderful belief in the power of the press, and his section on this is both interesting and suggestive. " There might," he says in conclusion, " perhaps, be no harm in regulating, as a last resource, the contingent to be furnished by the several States for enforcing the decrees of the Court. But the necessity for the employment of this resource

would, in all human probability, be superseded for ever by having recourse to the much more simple and less burthensome expedient of introducing into the instrument by which such Court was instituted, a clause guaranteeing the liberty of the press in each State, in such sort that the Diet might find no obstacle to its giving, in every State, to its decrees and to every paper whatever, which it might think proper to sanction with its signature, the most extensive and unlimited circulation"—truly a characteristic Bentham project.

This condemnation of coercive sanctions was, as one might imagine, welcomed among the Peace Societies. Ladd in 1840, Elihu Burritt in 1849,—a Memoire to the Peace Congress in Paris,—Miles in 1874, all took up this doctrine. Ladd gave it precision. The Common Court in his scheme gives way to a Congress, the duty of which should be to draw up international laws and regulations, and to a Tribunal which should apply them. In Marcoartu's essay —"Internationalism"—which appeared in 1874, the scheme again emerges with slight modification.

Laveleye's "Des Causes actuelles de guerre en Europe et de l'arbitrage" appeared in 1873. Still useful to-day, it had an immense influence in the last quarter of the XIXth century. We have seen, above, Mr. Gladstone with it in his hand replying to Henry Richard. As the title indicates, the last few chapters are devoted to theory: two reforms are necessary—(1) the elaboration and fixation of a code of international law, and (2) the establishment of a tribunal to apply it. The personnel of the Court should be diplomatists and skilled jurists. The decisions are in no case to rest upon coercive sanctions.

Dudley Field, in 1872, made a contribution to arbitration theory. The title of his scheme is "A High Tribunal of Arbitration," and the book is written in concise sections. The

peculiarity is his "Joint High Commission": this should consist of five members from each of the contending parties: should their efforts fail they must give notice, and have recourse to the High Tribunal. The sanction is given in Section 536—"Every nation, party to this Code, binds itself to unite in forming a Join High Commission, and a High Tribunal of Arbitration, in the cases hereinbefore specified as proper for its action, and to submit to the decision of a High Tribunal of Arbitration, constituted and proceeding in conformity to Article 535."

Leone Levi of Lincoln's Inn, Barrister-at-Law, in October 1887, published a "Draft Project," which was revised by Lord Hobhouse. It is not only a most interesting, but also an important plan, having been approved in 1889 by the Universal Peace Congress. Article XIV. touches upon the question of sanction, and is worth quoting. "It is not contemplated to provide for the exercise of physical force in order to secure reference to the Council, or to compel compliance with the award of the Court when made. The authority of the Council is moral, not physical. Nevertheless, when the award of its regularly approved Court is set at naught by the contending parties, it shall be the duty of the Council to communicate the facts of the case, and the award of the Court thereon, to all the States represented in the same."

We have treated this genus of peace project more fully, because it is now seen—after the Hague Conference has nailed down one solution—that this is the nearest method to actual practice or probable development.

Our next sections will be briefer.

IV. An International Tribunal—with a Sanction of Force.

This scheme, as Revon acutely notes, lies very close indeed to the dream of a United States of Europe. "Comment en effet," he asks, "organiser une armée internationale sans établir au préalable une sorte d'alliance fédérative, si vague qu'elle soit, entre les divers Etats qui veulent s'unir pour respecter ensemble le droit commun de l'Europe."[1]

Revon makes much of the contradiction of establishing peace by war, though that has been, is, and may be the means in the future. But the chief objection to schemes of this nature is that these fall far short of practical life, and, since the Hague Convention, may be regarded as obsolete. Kamarovsky, unfortunately, followed this track. It is due to the pre-eminence of his work that we should note his scheme in part. On sanctions he pronounces: "Un certain delai serait accordé aux parties pour mettre à l'éxécution les décisions. Si après l'expiration de ce délai, l'une des parties persistait à refuser d'éxécuter la décision, l'autre partie conserverait, dans des extrêmes cas, le droit de lui déclarer la guerre, droit qui recevrait alors une sanction nouvelle et plus parfaite; indépendamment de cela, une série de mesures coercitives serait admissible contre cette violation flagrante du droit international."[2]

[1] "How, as a matter of fact, can one organise an international army without establishing as a preliminary a kind of federative alliance, however vague it may be, among the various states who wish to unite for the collective upholding of the common laws of Europe."

[2] "A certain delay would be accorded to the parties for putting the decisions in force. If, after the expiration of this period, one of the parties persists in refusing to execute the decision, the other party would reserve, in extreme cases, the right of declaring war upon it, a right which would then receive a new and more perfect sanction: apart from that, a series of coercive measures would be admissible against this flagrant violation of international law."

As a final word upon this class of semi-federal schemes let us note how Sir Edmund Hornby in his scheme for a Permanent International Tribunal surmounts the difficulties with regard to sanctions. It is an half-hearted plan and no improvement upon present conditions. "The enforcement," he says, "of an award or judgment is a matter of consideration alone for the concurring Parties to the establishment of the tribunal. It is open to them individually or collectively to remonstrate on non-compliance: to compel performance by withdrawal or suspension of diplomatic relations (consular or trade relations remaining unaffected), by the infliction of a pecuniary penalty, by seizure and occupation of territory, and even in extreme cases, by war."

V. The United States of Europe.

The Supreme Court of the United States has served as a text for schemes of this nature. This triumph of justice consists of seven judges, without whose co-operation the constitution would be unworkable. They summon before them Sovereign Powers. "The State of New York versus the State of Ohio" was announced by the Clerk of the Court in De Tocqueville's hearing and he records how impressed he was when he realised that these two states, containing many millions of citizens, submitted their interests to a court of Judges. In Case's words, "the peace, the prosperity, and the very existence of the Union are vested in the hands of the seven judges: the executive appeals to them for protection from the encroachment of the legislature and the legislature of the executive." All this huge authority is based simply upon public opinion.

Hence, many schemes for the establishment of a similar organisation in Europe—a United States. John Stuart Mill had a tendency towards this solution of the problem and put forward a scheme for a Supreme Federal Court. Most of

the well known names among active workers for peace are associated with this plan. It was, indeed, some years ago, much more fashionable than permanent arbitration. It must suffice to quote them. Charles Lemmonier, Bara-Louis, that wonderful young Belgian, Goblet D'Alviella in his "Désarmer on déchoir," Pierre Larroque, Professor Lorimer, and the greatest of all modern jurists, Bluntschli, whose controversy with Von Moltke on the subject is excellent reading.

Bluntschli's great name demands our attention to his scheme for a brief space. He named his plan "Die Organisation des Europäischen Statenvereines." He says this federation is by no means chimerical, and a desire for it is manifest. He sets down the great principle which we should accept as the "sine quâ non," even to-day, of all plans for peace, viz., the indispensable principle is *the careful preservation of the independence and freedom of the Associated States.*

It must suffice to quote his arrangement of the problems. They may be grouped in four categories—

(1) The establishment and enunciation of a Code of International Law, International Legislation.

(2) Preservation of the Peace of the Nations and the exercise of the Higher International Politics (grossen völkerrechtlichen Politik).

(3) Management of matters of International Administration.

(4) International Administration of Justice.

The only point needing elucidation is the Higher Politics. A two-chambered Congress of all Europe is set up in the scheme to deal with questions which fall under this head, while the main prop of the whole structure is an international federal tribunal.

Two other schemes remain, which we must dismiss in a word or two.

VI. Universal Monarchy.

Those who remember our treatment of arbitration as one of two methods towards an enlargement of the area under one sovereign authority, will see that the above scheme is alien alike to actual European affairs to-day, and to the progress of arbitration. Since the fall of the Corsican it has entirely disappeared as a serious solution of the problem.

VII. Pontifical Jurisdiction.

This is a revival of past conditions. There was a temporary recrudescence of the scheme after the Pope's mediation in the dispute between Germany and Spain over the Caroline Islands in 1885. Lacointa then accentuated the many claims of the Pontificate to a kind of moral supremacy over Europe, but such advocacy is foreign to the spirit of modern nations and cannot but be considered chimerical. The present condition of things in France seems to show that the influence of the Pope, though immense, is lessening, if anything—certainly not increasing.

CHAPTER XII.

The Wars of the Nineteenth Century and the War of the Future.

This chapter takes up a thread that has been dropped for a long time. The plan that was laid down for this Essay was a parallel review of peace and war from the earliest period. Hence it is now necessary, after the discussion of the spread of pacific ideas throughout the 19th century, to summarise the causes and results of the wars during the same period, keeping a careful watch for incipient signs of change, development or decay.

A. The Wars of the French Revolution.

The French Revolution has been the problem of a century, and even now we know but too little of its real meaning. The "ancien régime" was abolished under the pressure of the Zeitgeist, or the fund of altruistic feeling—to use Benjamin Kidd's conception—by the nobility themselves. Up to 1790 all was carried out in a spirit that could in no way be construed as a menace to Europe. But the day of popular governments had not yet come, and the monarchs of Europe determined to make war on France; they resolved to dissect her as they had dissected Poland. Hence the Declaration of Pillnitz and the campaign the following year on the Rhine.

Undoubtedly, in the light of recent researches and truer insight, the atrocities of the Revolution were only the reflection of the cowardly opportunist action of the Powers;

and our admiration for the French in the early campaigns of the nineties cannot be too great. The cruel wrong that was done to France by these unprovoked invasions, was inevitably the spring of that immense synergy and virility, which could, in the end, cry "checkmate" to the crooked plans of the European chancellaries. Remember Brunswick's proclamation. He threatened to raze Paris to the ground and reduce France to a desert. If ever there was a just war, the young Republic could claim that title for the early Rhenish campaigns. In 1783 the French frontiers were all in the hands of her enemies and her ports were blockaded by hostile fleets. In fifteen months France shook herself free.

B. Napoleon.

It would be futile to try to condense the effect of Napoleon's career upon the Europe of his day and the Europe of all time. Nothing could be easier than to dismiss him, as the Peace Society Literature does, by calling him a murderer and a butcher and estimating how many French conscripts he left in foreign graves, but his *meaning* to the world was more than that. He was a man of liberal spirit and hammered, out of the visions of the great revolutionists, a code and constitution of democratic type. He never wished to smother the demands of the people, but to comply with and spread them. The countries he conquered, when his yoke was shaken off, clung tenaciously to the constitution and liberties he had granted. As a final word, and as a proof to our mind of his intellectual significance, it must be noted that the monarchs of Europe used his downfall to crush out among their peoples the growing power of the masses, and the seeds of democracy that were planted everywhere.

Napoleon's direct influence upon the future political destiny of Europe was immense. One or two instances may

be quoted in proof. Italy, which was a huge congeries of republics, monarchies and principalities, was, under his guiding hand, put upon the path which eventually led to the unity of the nation. It was the Corsican, too, who made Bismarck's task a possible one. At the opening of Napoleon's career, *i.e.*, when he fought his first Italian campaign, Germany was a mass of small states, all sovereign or quasi-sovereign. The number is almost inconceivable—over one thousand. The process of amalgamating this formless aggregate falls into two stages. In 1805 and 1806, after first secularising the territories held by sovereign Catholic dignitaries, Napoleon's agents undertook the mediatisation of numerous sovereign states ruled by Counts and Knights. After Austerlitz, Napoleon began to raise in Germany a counterpoise to Austria. Bavaria and Saxony, strengthened by the inclusion of many smaller states, were made into kingdoms. As a result of these two processes, the Holy Roman Empire disappeared, and the way for the unification of Germany was open. The thousand sovereign "closes" of Germany in 1796 had fallen to forty when the Corsican was immured in St. Helena.

It is sad to think how blind the democracies of Europe were, and how, in combating Napoleon, they fastened the mill-stone of arbitrary power round their necks for more than a generation. Autonomy, on the death of the great strategist, could easily have been secured, but to struggle against the great Napoleon was to give themselves into the hands of reactionaries and despots. For instance—Spain. "The Spanish," writes a modern historian, "had wasted all their moral and physical forces in an absurd fight against the principles of modern liberalism offered to them by Napoleon, and thus lost all capacity or real desire for the modern system of liberal

government. In other words, it may be said, in the Peninsular War a grave indeed was dug, but it was not the grave of Napoleon, but the grave of the Spanish nation."

C. The Reaction.

The work of the greatest of all revolutions was, in the minds of the Powers of Europe, to be buried and forgotten in an era of unqualified absolutism, initiated at the Congress of Vienna in 1814. The spirit of this diplomatic foregathering may be appreciated from a remark of Humboldt to Talleyrand: "Might is right; we do not recognise the law of nations to which you have appealed."

Prussia wanted Saxony. This claim Austria could not admit; she wanted for herself the chief place in the disposition of Europe. Alexander of Russia wanted more of Poland, and got it, while the common object of all was the initiation of a system of obscurantism and police persecution. The period 1815 to 1848 was a shameful one, full of outrages upon the liberties of the people. Italy, Germany and Austria were browbeaten by police; their millions of people were sullen and desperate under the yoke they had unconsciously fastened round their own necks.

The only bright page in the reaction was the Greek War of Independence. Wholesale massacres upon the Island of Chios in 1822 moved the Powers, then sunk in the lethargy that successful repression always induces, to interfere. The Russian invasion and the Battle of Navarino compelled the Turks to recognise Greek independence in 1829.

D. The Revolutions.

The dynastic change in France in 1830, owing to the stupid ordinances of Charles X., had great effect upon Europe. It made the passing of the Reform Bill in this country possible, induced the Belgians to break off from

Holland and become an independent State, and it led to the ill-fated rebellion of the Poles against Russia, which cost them their autonomy.

It was, however, the February Revolution in Paris in 1848 that awakened liberal ideals all through Europe. Following the lead of France, Hungary rose; and, when Austria tried repressive measures, armed every citizen. Russia was called in, and finally, at Vilagos in 1849, crushed the revolt. The subsequent efforts of Austria to stifle liberty, and Germanise Hungary, completely failed, and 1860 saw the dawn of a new era.

Slight revolutions broke out in Austria and Italy, but were quickly suppressed by the Austrian generals.

Intellectual movements rapidly follow political changes, and, after 1848, there set in that tendency towards democracy and freedom, and the control of the government by the people themselves, which is the dominant political movement of the day.

E. The Unity of Italy.

The kingdom of Italy, as constituted by Napoleon the Great, lived as an ideal in the breasts of the Italians, but their character and resources precluded them from ever hoping to bring about the unification of their country by their own unaided efforts. Hence Cavour could not use Bismarck's method of "blood and iron." He had to secure France as an ally to combat the opposition of Austria, the Pope and the King of Naples. Napoleon had deep sympathies for Italy, but it was the outrage of Orsini that finally determined him to act.

Napoleon declared war against Austria. Two engagements, at Magenta and Solferino, aroused the unbounded enthusiasm of the Italian people. Louis hesitated and hastily made peace, thereby gaining the hatred of the

excitable Italians. Garibaldi snatched the national plans from ruin, and the proclamation of Victor Emmanuel as King of Italy completed the work.

F. The Unity of Germany.

The first great obstacle to the plans of Bismarck was the position of Austria as rival to Prussia in the work of unifying Germany. The Iron Chancellor undoubtedly was right in thinking that the methods of Cavour in Italy would be of no service in Germany. It was a matter of diplomacy and war. He saw from the very beginning that Germany could only get that heat necessary to weld the states firmly together from the passion of successful conquest. His life was given to the task and no scruples were allowed to interfere with his plans.

Bismarck had at the outset two objects—(1) to embroil Austria, (2) to test the pulse of Europe and see if he had anything to fear from the Powers.

The Danish War solved these two problems. The States of Europe did not lift a finger, and Austria was mixed up in an affair in which she had not the slightest interest whatever. The Treaty of Gastein, in 1865, was specially framed by Bismarck to lead to complications. He established separate spheres of jurisdiction for Austria and Prussia in Schleswig-Holstein in the hope of serious friction.

The Chancellor did not fail to take advantage of a few incidents that soon cropped up, and, against the wishes of King William, declared war in 1866. The victory of Sadowa meant the triumph of Bismarck's aims. He treated Austria lightly, because he wished to have her friendly when the day came to attack France. Besides she was now out of the running. Only one nation could now achieve the unity of Germany, and that was Prussia.

There was still one danger to overcome. The centrifugal tendencies of the Catholic Church and the sovereign families

in the south of Germany stood in the way of a permanent union of North and South. Bismarck might have compelled Bavaria into the North German Confederacy, but he preferred to weld the whole of the Germanic States indissolubly together by one more huge successful war.

He deliberately schemed to embroil France. Unfortunately Eugénie's ill-fated ambitions played into his hands. She was determined to restore the prestige of the Empire and secure the succession of her son by a war with Germany. A falsification of King William's telegram, which had been handed to Benedetti, on the part of Bismarck, aroused French indignation, and the cry "à Berlin" rang along the Boulevards.

That frightful war which, in sober language, can be called nothing but a crime, lives for ever in Zola's pages. It led to the firm binding together of Germany and crowned Bismarck's efforts with success. It wounded France to the heart and it is questionable if she will ever recover.

The results of these wars of the Nineteenth Century are neither few nor unimportant. Europe has at last found a coincidence between her natural and political divisions. Austria, which sprawled all over Europe at the beginning of the century, has now territorial continuity. Germany, after many centuries, has found the boundaries nature marked out for her, while Italy once again has attained to a unified territory, bounded by natural barriers and forming a homogeneous whole.

Russia, too, has been turned eastwards. This is the whole significance of the Crimean War, which inevitably carried in its bosom the Russo-Japanese struggle. The checking of Russian ambitions towards the West meant her expansion eastwards, and her collision with the new nation there.

This, broadly, is the history of the century. The underlying progress in all these wars is evident, but the question as to whether the price paid has not exceeded the accruing benefits, is a useless one; none can give an answer: we may shudder at Bismarckian imperialism, but cannot question the immense benefits it has engendered for Europe and Western civilisation. Out of fragments, a great nation has come into being, one that is eager and willing to share in the work of promoting progress and civilisation.

To resume our analysis of war. We have from the beginning regarded it as an enterprise. It must pay. Again we saw that in the earliest stages it was of the greatest utility to mankind in assuring the continuation of the fittest peoples and in providing security. Its work in the latter direction, we saw, engendered a series of progress in industry and commerce, which usurped some of the functions of war, —now becoming less and less useful.

It is necessary, however, to keep in mind its character as an enterprise. When it can be made to pay, it will still be waged, unless the conscience of peoples can be aroused, and it is just at this point that we find ground for hope. It must be noted that the exploiting minorities at the head of affairs, by relaxing taxation and freeing industry in their own interests, permitted liberal ideas to grow, which, after 1848, transformed the constitutions of European States. All are now, with the exception of Russia, more or less under popular control. In Anitchow's words, "War is no longer the fruit of unconscious elementary powers: war is no longer a mere matter of chance: war expresses absence of solidarity and the sensible conflict of two social organisms in their conscious activity." The combinations of Talleyrand, Metternich and Napoleon III. are no longer possible, and a great wave of national life has swept over political coteries.

Both the animosity of one State against another, and the generality of interests have acquired a wider base."

What, then, will be the war of the future? Anitchow answers that the only cause of future struggles will be real political or economic interests. Perhaps, however, Leroy Beaulieu will interpret the fears of many of us best. "For whatever anyone may say," he writes, "occasions of quarrel do still survive among modern nations—frontier questions, half-understood trade disputes, questions of the infiltration of strangers from one country into another, and of the regulations under which they are placed, questions of unequal density of population and of differences of wealth in different territories. These last two questions may, in the long run, become acute. Wealthy nations claim the right to harass and obstruct immigration which comes to them from poor countries, to levy taxes on strangers, to subject them to more or less vexatious formalities. Herein lies a serious peril."

We have still hope, however. None of these seem sufficient pretexts for the huge conflicts, at ruinous price, which must be the form of war in the future. Johann Bloch's great work proves that if we regard war as an enterprise, nothing but the hugest gains or the most serious threatening of vital interests will lead a modern nation to engage in a struggle, to wage which costs millions of pounds per day, and which may, in a very short time, bring a rich nation to the brink of ruin.

The wars of the future will be like the Russo-Japanese War in all essentials. When two nations are brought face to face; when the expansion of either, means injuring the other, and both are equally determined to protect their trade interests and their markets, their political aims and ideals, then there remains but the sword to determine which shall

go on. Arbitration can never decide these huge questions of progress and evolution. No arbitral court can say to this nation "thou shalt retire," and to that one "thou shalt advance"; only time and war and industry and efficiency can, by complex action, solve these questions.

CHAPTER XIII.

The Hague Conference.

Opinions upon the Hague Conference are of the most varied description. Those that are hostile we shall be content to leave in oblivion. It is a singular fact that after the first shock of the Czar's rescript the press and public throughout the world—with a few notable exceptions, such as Tolstoi—were exceedingly well disposed towards the proposed Parliament.

This interest and favourable comment maintained its place until the diplomatists had been in assembly for some time, when a sudden revulsion of feeling took place and an indifference and quasi-contempt has been the tone since. The notable point, however, is that those in the inner circle of the diplomatic world were covertly unsympathetic and sceptical until the work was well in hand. Coincident with the change outside; within, a distinct reversal of feeling was notable, until, before the end, when the actual results of its work became apparent, the Conference was animated by one common spirit of co-operation and friendliness. "Looking back over the whole period of the Conference," says Mr. Holls, "its most beautiful feature, on the whole, was the admirable spirit manifested by practically all the delegates." Ambassador White says of the Conference that it "marks the first stage of the abolition of the scourge of war." One great lawyer called it "the one hope of mankind," and Case[1] himself qualifies it as "the healthiest symptom of international law."

[1] "Arbiter in Council."

One of the American representatives frankly avows the conviction that "the Peace Conference accomplished a great and glorious result, not only in the humanising of warfare and the codification of the laws of war, but, above all in the promulgation of the Magna Charta of International Law, the binding together of the civilised powers in a federation for Justice, and the establishment of a permanent International Court of Arbitration."

The opinion of Mr. Holls touches upon the special significance of the Hague Conference for us. We have nowhere seen it pointed out, but in our humble opinion the unique value of the Conference to students of "the irreducible antinomy of war" is that it has delivered an authoritative answer to all the theories of the past century. It is a summation at the conclusion of the 19th century of the propaganda and theorising we have endeavoured to sketch. "This," it said, "is the result of a hundred years' work. This is in harmony with practical exigencies; this is all that can safely be done at present."

Some of the finest minds in the world were in colloquy in the Huis ten Bosch. Their labours fixed, for some years, if not in detail, at least in outline, all that is possible, and yet the Peace Societies—despite Dr. Darby Evans, one is glad to note—wish to establish compulsory arbitration and clamour for disarmament. They will not listen to conferences nor to such a warning as: "Depend upon it, the moment the cloven foot of coercion is admitted, that movement is doomed. The introduction of coercion either as sanctions or obligatory arbitration, may prove to be the first step backward to the old system."[1] This quotation, in a nutshell, supports our contention that the Hague Conference, in principle, represents the high-water mark of

[1] Dr. Darby Evans. "International Tribunals."

the peace movement so far : and to urge what it condemns is to leave practical necessities apart altogether.

A. The Czar's Rescript.

A lithographed communication was handed by Count Mouravieff, the Russian Foreign Minister, to the diplomats at his weekly reception, on August 24th, 1898. This was the famous rescript, which in itself is a fact of wide significance and importance.

It plunges immediately "in medias res," and is not without eloquent passages, lamenting the waste of "the intellectual and physical strength of the nations," under the present military régime.

"To put an end to these incessant armaments and to seek the means of warding off the calamities which are threatening the whole world—such is the supreme duty which is to-day imposed on all States." This is the kernel of the communication which was misinterpreted all over the world. Count Mouravieff verbally made a pronouncement which considerably modified the Rescript. He made it clear that the object which inspired His Imperial Majesty to summon the Conference was not a proposal for general disarming—because he was convinced that such a proposal would not be generally accepted as a practical one at present —but the desire "to initiate an effort, the effects of which could only be gradual."

Count Mouravieff, on January 11th, 1899, again addressed the Powers and asked for an exchange of ideas upon two objects—

(1) "Of seeking, without delay, means for putting a limit to the progressive increase of military and naval armaments, a question the solution of which becomes evidently more and

more urgent in view of the fresh extension given to these armaments; and

(2) Of preparing the way for a discussion of the questions, relating to the possibility of preventing armed conflicts by the pacific means at the disposal of international diplomacy.

Is it not discouraging to think that Russia has since waged a bloody war, had a "Black Sunday," weltered in Pogroms, and dismissed the people's representatives since the promulgation of these documents? Indeed, it is a sad commentary upon the complexity of the forces which work in and through a nation, modifying its wishes and making it a puppet in the hands of Destiny.

To keep to our aim of seeing all round a subject, if possible, we must mention Waldstein's view of the Rescript.[1] The probability is that it is a calumny, but even that is unascertainable. He notes first the appearance of the United States upon the field as a naval and military power: that, he declares, had a great influence with the Russian Foreign Office. "At the same time," he continues, "it was a curious and fortunate coincidence that, just at that moment, France had completed its part in furthering Russian interests and was becoming inconveniently exacting to see some return of courtesy on its side. . . . No more convenient means of getting out of the disagreeable relation to France could ever have presented itself to Russia. . . .

. . . Might it not help the Peace Advocates even in the United States (besides the anti-Imperialists in England and Germany), and ultimately produce an anti-expansionist movement there? Meanwhile the whole situation left nothing to be desired. Russia had staked out all its

[1] "Expansion of Western Ideals." Charles Waldstein.

' claims,' all the districts it ever hoped to hold, including the Hinterlands : and all it need ask for from a Supreme Court of Arbitration, should the Conference succeed, was a maintenance of the *status quo* when such a Court was once formed." He then points out that between the Manifesto and the Conference Russia " increased the number of claims and staked out in breathless haste as much as possible."

The object of this quotation is to warn us at the outset to be exceedingly moderate in our language and most of all in our conclusions upon this Conference. Far from wishing to believe in the truth or approximate truth of Waldstein's criticism, we must yet maintain an open or even a suspicious attitude towards much that seems fair and honourable. However this may be, the Czar put into the hands of the people of Great Britain, France, Germany and the United States a valuable instrument which has served to achieve, if not disarmament, at least " some little thing."

B. The Meeting of the Conference.

It was on Thursday the 18th of May 1899 that the Hague, in festive garb, welcomed the representatives who were to meet in the House in the Wood to work for peace.

The assembly was a unique one. Undoubtedly the importance of the event will be seen better from the distant future. It was the last page of one chapter of world-history and the first of a new one. It was the first and only time that the nations of the world had come together to work in a friendly spirit of reciprocation, to make serious efforts to ensure a permanent peace.

The true ancestors of the Conference were the great congresses which met at Utrecht in 1713, at Paris in 1763, at Vienna in 1815, at Paris in 1857 and at Berlin in 1878. The stimulus in all these cases was the exhaustion of war, and herein is the unique feature of the meeting at the

Hague, that it was conceived and brought together in a time of profound peace.

Before, however, reviewing its labours, the constitution of the Conference must be noted. The Holy See and the South African Republics were excluded. The reasons for the first omission is obscure, but evidently the well-known objections of the British Government secured the seclusion of the latter States. Unfortunately, too, the South American Republics were unrepresented, thereby depriving the Conference of the valuable aid of that great jurist, M. Calvo.

Altogether twenty-six governments were represented, whose territories comprise nine-tenths of the globe and whose populations consist of fourteen hundred millions out of the sixteen hundred the world contains. No wonder Dr. Evans says it was an assembly—no longer Amphictyonic—but world-wide.

C. The Work of the Conference.

The first duty after the preliminaries had been got over was to divide the labour. President de Stael was the author of the plan which named three committees, each having power to subdivide itself.

a. Limitation of Armaments.

The question of the limitation of armaments was thoroughly discussed at the Hague Conference, but the realisation of any scheme in that direction was pronounced to be, at the present moment, premature. The opinion among the illustrious men who formed the Committee seemed to be that, until a suitable substitute for war is provided, the old proverb has still much of its original truth —"si vis pacem, para bellum." Mr. Holls, further, is ex-

ceedingly doubtful, as, too, are many of us, whether, owing to the inherent difficulties of the scheme, such a limitation will ever be the result of international agreement.

All went well in committee till the speech of General Gross von Schwarzhoff. Preceding, Colonel Glinsky of Russia had laid down a definite proposal such as "the maintenance, for the term of five years, of the amount of the military budget in force at the present time," and for navies, "the acceptance in principle of fixing for a term of three years the amount of the naval budget." We have seen in the press both of these schemes put forward as new ideas since the pacific speeches of the present cabinet: peace reformers have always been ill-informed.

Schwarzhoff, then, following upon these proposals, administered the death blow. "I can hardly believe," he said, "that among my honoured colleagues there is a single one ready to state that his Sovereign, his Government, is engaged in working for the inevitable ruin, the slow, but sure, annihilation of his country." The worthy General here tears the veil aside from a form of cant. It has been dinned into our ears since 1840 about the crushing burden of armaments. "Burdens" undoubtedly we may call them, "heavy" perhaps, but "crushing" is ridiculous. Let us be quite truthful, quite free from a cant that is even fashionable. "I have no mandate," continued Schwarzhoff, "to speak for my honoured colleagues, but so far as Germany is concerned, I am able to reassure her friends and to relieve all well-meant anxiety. The German people are not crushed under the weight of charges and taxes; it is not hanging on the brink of an abyss; it is not approaching exhaustion and ruin. Quite the contrary . . ."

Even the recent clash between the Emperor and Reichstag is not based upon the amount of the colonial vote,

but upon the right of the people's representatives to control colonial affairs.

The matter was finally referred to sub-committees, but Schwartzhoff had, in interpreting the opinion of the Conference, killed the proposals. They were rejected by the unanimous voice of all the delegates, with the sole exception of Colonel Glinsky.

Baron de Bildt of Norway and Sweden well summed up the work of the Conference so far. "I state this fact with sincerest regret, I may say more, with great sorrow, gentlemen, we are about to terminate our labours, recognising that we have been confronted by one of the most important problems of the century, and confessing that we have done very little towards solving it."

β. Humanising of War.

The second, third and fourth clauses of Mouravieff's circular formed the text for these labours of the Conference. Various propositions of a restrictive nature upon powders and explosives were rejected, but it was agreed to forbid for five years the throwing of projectiles from balloons.

It was elicited that America did not consider any limitation of military inventions of any value. The use of the expanding bullet was the centre of an interesting discussion, and Great Britain and the United States were put in a false position, inasmuch as they appeared to support the use of a bullet which gave unnecessary suffering. Some little discussion upon naval weapons concluded the work of the First Committee.

γ. The Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of August 22nd, 1864.

There was no hesitation or dilatoriness about this portion of the work. The articles provide for official hospital ships,

armed with the red-cross flag. Ships, provided by private individuals or relief societies, are to be recognised as well. Even the ships supplied by neutral States are made exempt from capture. The distinctive marks of these ships were decided upon, and the claim of Persia and Siam to a special flag allowed. The inviolability of the staff of hospital ships was guaranteed, and an agreement to care for all sick and wounded, alike, ratified.

The Second Committee had still to revise the Declaration concerning the laws and customs of war, adopted in 1874, by the Conference of Brussels, but never ratified.

The Treaty, which was the outcome of these deliberations, is a thorough document, laying down with precision the laws of war. It has been approved by all the Signatory Powers except China and Switzerland. It is divided into chapters. The first is: What constitutes a Belligerent? the second treats of Prisoners of War, and the concluding one "of the Sick and Wounded." A second portion follows, divided in the same way. Chapter I.—"Of means of injuring the enemy, sieges and bombardments." Chapter II.—"On Spies." Chapter III.—"On Flags of Truce." Chapter IV.—"On Capitulations." Chapter V.—"On Armistices." The third section is undivided and deals with "Military authority over hostile territory." The final section deals with "the detention of belligerents and the care of the wounded in neutral countries."

The Conference, by this treaty alone, justified its existence. Professor de Maartens of Russia says, rightly: "The treaty on the laws and customs of war will certainly be as notable as the treaty on arbitration"; while the application of the Treaty of Geneva to naval warfare has put an end to a diplomatic correspondence, for thirty-one years striving to this end.

δ. *International Commissions of Inquiry and Arbitration.*

This was the work of the Third Committee. Unlike the two previous technical spheres of discussion, the present one embraced delicate diplomatic questions which touched that precious jewel, sovereignty, at many points.

Immediately the work was devolved upon a smaller "Comité d'Examen," which rapidly became the centre of interest in the entire Conference. It became apparent that any little tug-of-war that was likely to arise would arise in the "Comité d'Examen." Consequently, extraordinary efforts were made to keep a spirit of harmony. Germany seemed likely to discontinue its co-operation until the Committee adjourned to allow Dr. Zorn to go to Berlin. Mr. Holls went also to confer with Prince Hohenlohe and Count Von Bülow: the united efforts of the German and American delegates succeeded in pulling the treaty out of the fire.

The result of the nine sittings of this Committee was the "Convention for the Peaceful Adjustment of International Differences."

This document is divided into titles.

Title I. expresses the resolution of all the Powers to come to peaceful solution of all differences if possible.

Title II., on "Good Offices and Mediation," we have analysed above.

Title III.

On International Commissions of Inquiry.

Suppose we had had no "Commission d'Enquête," what would have been the result of the Dogger Bank disaster? Feeling in this country and in Russia was acute, but the calm announcement that the Commission should shed light

on the circumstances gave pause, and by the time of the decision all rancour had evaporated.

The article which established such a useful instrument for peace is :—

"In differences of an international nature involving neither honor nor vital interests, and arising from a difference of opinion on matters of fact, the Signatory powers recommend that Parties who have not been able by diplomatic methods to come to an agreement, should, as far as circumstances allow, institute an International Commission of Inquiry to facilitate a solution of the differences by elucidating the facts, by means of an impartial and conscientious investigation." It must be distinctly understood that the litigating Powers are always free to accept or reject the services of a "Commission d'Enquête."

One authority says, "for practical purposes I expect that we shall use the International 'Commissions d'Enquête' nine times, for once that we shall use the permanent court of arbitration." The great value, indeed, of the new organisation is that it is elastic. No promise to abide by the decision is exacted, and therefore it can be resorted to in a time of heat and passion when arbitration would not recommend itself. It is, however, limited in its scope. It is only when the strife is upon a question of fact that the "Commission d'Enquête" is so valuable. This is perfectly plain from Article 14, "The report of the International Commission of Inquiry shall be limited to a statement of the facts, and shall in no way have the character of an arbitral award. It leaves the Powers in controversy freedom as to the effect to be given to such statement."

We have now cleared the way for the arbitration portion of the treaty which contains many lessons for us and will serve as a commentary upon our work thus far.

TITLE IV.

CHAPTER I.—ON ARBITRAL JUSTICE.

Article 15—"International Arbitration has for its object the determination of controversies between States, by judges of their own choice, upon the basis of respect for law."

Arbitration does not supplant direct negotiation nor even mediation. The use of it may be supplementary to either.

Article 16—"In questions of a judicial character, and especially in questions regarding the interpretation or application of international treaties or conventions, arbitration is recognised by the Signatory Powers as the most efficacious and at the same time the most equitable method of deciding controversies which have not been settled by diplomatic methods."

This is an important declaration upon a hazy point. The contention of the Peace Societies always has been, and is, that any question of whatsoever kind can be resolved by the use of arbitration. Not so the jurists. A few years ago they were almost unanimously of the opinion that only questions of a judicial character could be submitted to an arbitrator. But those who remember Case's strong argument, know that arbitration in its origins was just a supplement to the law. A question which did not seem fitted for taking before a judge owing to inherent difficulties was submitted to an arbitrator, who was expected to adopt a method of give and take in order to smooth away the difficulty.

How then has arbitration so turned round? Undoubtedly in Greece, and in the Middle Ages the non-judicial species of arbitration was predominant. The reason for the change is, in our opinion, the rise of diplomacy with long years of experience and a tradition, and, secondly, the development of International Law. Now, as ex-President Harrison in

the Venezuela Boundary Arbitration argued, "If conventions, if accommodation, and if the rule of 'give and take' are to be used, then let the diplomatists settle the question." Diplomacy, in fact, has usurped the function of arbitration, which has, owing to the development of International Law, been gradually transferred to those judicial questions which diplomacy so often fails to solve.

It is, however, to be expected that arbitration has not altogether lost its elasticity. It has not: cases are extant where just those classes of difficulties which ex-President Harrison says are peculiarly the sphere of the diplomatists have been settled by reference to an arbitral board: the most notable instance is that before which Harrison made this statement—The Venezuela Boundary Question.

To return to the Article. It pronounces for a middle course. It states plainly that the tendency is more and more to restrict arbitration to questions wherein a judicial element is introduced, but does not limit it entirely to that class. "A determination," says Mr. Holls, "by judges can, properly speaking, only be had regarding a judicial question, or a question arising upon a particular document. Conflicts of interest and political differences are not, strictly speaking, proper subjects for arbitration in the restricted sense of the term." But there is a wider and older use of arbitration which can, in many ways, adapt itself to these vital questions: much depends upon the form of the question to be submitted. It determines the method of the judges. In the Behring Sea Case in 1899, owing to the form of the Convention, the arbitrators regarded their task as strictly judicial, whereas, we have seen, in the Venezuela dispute the judges adopted the rule of "give and take."

Further, however, note that the latter class tends to contract. Diplomacy does a great deal to solve such questions, but even to-day they drag until they become acute

and have to be solved by the sword. It is sad to have to say it, and heterodox in a Peace Essay, but some questions, having regard to the time and place and the imperfections of mankind, cannot be brought within the sphere of arbitration. But suffice it to say that, except for these huge conflicts of interests—such as led to the Russo-Japanese War—arbitration, mediation and diplomacy are provided to bring about a peaceful solution of all subsidiary questions, and undoubtedly will be used in the future.

It seems true that at last we have rid ourselves of the war of trivial character from the point of view of the causes which originate it. The war of petty passion, the religious war, the dynastic war, all have gone, but the war of conflicting interests, can we in honesty affirm it has gone or is likely to go in the near future?

Article 17—"An agreement of arbitration may be made with reference to disputes already existing or those which hereafter arise. It may relate to every kind of controversy or solely to controversies of a particular character."

A controversy, when it arises, is submitted to arbitration: that is normal. An agreement to submit questions that may arise in the future is the product of late years. All the members of the International Postal Union are obliged to submit postal difficulties to arbitral justice: Holland and Portugal in 1894 made an agreement upon such lines in political matters. The much acclaimed treaty between Argentina and Chili is an obligatory agreement to submit all differences to arbitration. The friends of peace and some writers, Revon and others, see along this line the future progress of arbitration. Further on we shall give reasons for doubting that this is the case.

Article 18—"The agreement of arbitration implies the obligation to submit in good faith to the decision of the arbitral tribunal."

The article determines for the time being the question of sanctions. Arbitration must rest upon the moral sanction of public opinion. Dr. Darby Evans has gone thoroughly into this question. Austin's definition of law furnishes a starting point: "A law, in the liberal and proper sense of the word, is a rule laid down for the guidance of an intelligent being by an intelligent being having power over him." Every law implies, therefore, a sovereign authority which imposes the rule, and a sanction or power to compel obedience.

Strictly by this definition, International Law is falsely so called: the sanction, say some jurists, is missing—hence no law. Dr. Evans' solution seems the true one. It is granted that the policeman is necessary to the law, but it is contended that public opinion is behind them both. To rely, therefore, in International Arbitration, upon the purely moral sanction of public opinion, by no means reduces that institution to a merely academic status. The minor machinery which interprets public opinion in internal affairs is not necessary in international affairs, where the moral conscience of the States can be brought directly to bear. As the years go on it becomes more and more evident that no sanction of force is necessary. States *do* submit to arbitral awards: there is no extant case of a point blank refusal to carry out the award. The reason is, of course, that only minor questions are submitted. Should the dream of the Peace Societies come to pass, and great nations bind themselves to submit *all* questions to arbitration, the day would come when the treaty would be broken and an irreparable blow given to international honour.

Article 10, which provided for obligatory arbitration upon certain questions, "so far as they did not affect vital interests or national honour," was stricken out on the motion of Germany. It is a wonder that Mr. Stead did not

also call Dr. Zorn Judas Iscariot, because this German representative secured its rejection. As a matter of fact, the whole article was useless. Further, any dissentient voice to the establishment of a Permanent Court would probably have meant the failure of the proposal, consequently the Conference cheerfully sacrificed a useless provision to secure Germany's signature to the Permanent Court.

Title V.

The Permanent Court of Arbitrators.

The American Representatives made this their special object at the Conference and it soon became evident that the realisation of the idea would be an immense stride forward. Great Britain cordially sympathised and Lord Pauncefote took the initiative in bringing about the great reform. His speech was brief and bald but of great service. A Russian proposal was immediately forthcoming and there were therefore no dilatory preliminaries. In Mr. Holls' words his speech "was the right word, said at the right time, and marked a turning point in the history of the Conference." There were no difficulties in the way, in as much as, from the first, the principle that the family of nations is linked by bonds of co-operation and not of subordination, was admitted. It was recognised, too, that the new Court must retain, as M. Descamps expressed it, the character of "a free tribunal in the midst of independent States."

The most important proposal in the discussion was that of France, that the Bureau of the Court might be invested with an international mandate, strictly limited, giving it the power of initiative, and facilitating in most cases the recourse of Powers to arbitration.

This was stepping on dangerous ground, and the proposal had to be modified considerably before being embodied in the Convention. The critical moment, however, was Dr. Zorn's speech against the establishment of a Permanent

Court. He said the idea was premature: Germany could not possibly agree to the organisation of the permanent tribunal before having the preliminary benefit of satisfactory experience with occasional arbitrations. Professor Zorn was finally persuaded to co-operate, though he could not promise to bind his Government.

Mr. Holl's appeal to prevent the results of the Conference from turning out to be "purely platonic, inadequate, unsatisfactory, perhaps even farcical," was of great service. Germany promised her cordial adherence and stated that she recognised "the importance and grandeur of the new institution."

All was now plain sailing.

Article 20—"With the object of facilitating an immediate recourse to arbitration for international differences which could not be settled by diplomatic methods, the Signatory Powers undertake to organise a permanent Court of Arbitration, accessible at all times and acting, unless otherwise stipulated, in accordance with the rules of procedure included in the present Convention."

To sum up the rest of the labours of the Third Committee.

(1) "When nine Powers have ratified the Convention, the representatives of the Signatory Powers at the Hague meet, under the Dutch Minister of Foreign Affairs, as a permanent Administrative Council, to establish and direct a permanent Bureau on which the Court rests."

(2) "In the course of three months after ratification, each Power nominates competent Arbitrators (not more than four each) whose names, inscribed on a list of Arbitral Judges, form the Court."

(3) "Any two disputing Powers who decide to appeal to the Court, select two arbitrators each, from the list of members of the Court: the four so nominated select an Umpire, and the Tribunal, thus constituted, hears the case."

A code of procedure was framed which must surely put an end to the dozens of schemes which have been published in the past generation.

We have already noted that no misapprehension should exist upon this Convention. It merely agrees upon the establishment of the Court and its procedure, and in no way provides for reference to it.

Hence the Powers agreed, in order to remedy this defect in some measure, to call the attention of two Powers who are in dispute, to the existence of the Court, whenever an acute stage is reached. Further, the Powers reserved themselves the right of concluding separate treaties with each other, making a recourse to arbitration obligatory in all cases they choose.

Arrangements were made for the adhesion to the Convention of non-signatory Powers.

Before leaving this great reform let us note the American Declaration and Mr. Holl's remarks thereon. It will show us how feeble an institution is arbitration when it clashes with huge national interests. The Declaration reads: "Nothing contained in this Convention shall be so construed as to require the United States of America to depart from its traditional policy of not entering upon, interfering with, or entangling itself in political questions or internal administration of any foreign State, nor shall anything contained in the said Convention be so construed as to require the relinquishment, by the United States of America, of its traditional attitude towards purely American Questions."

Mr. Holls remarks, "It is, however, a fact that the United States of America is determined more firmly than ever before in its history, to maintain this policy and the Monroe Doctrine, in its later approved and extended form, carefully and energetically." One asks, might not this

extended doctrine be harmful to the interests of Europe? Such is exceedingly probable, nay, almost necessarily so: what then? Mr. Holls replies, "Not even in the supposed interest of universal peace would the American people have sanctioned for one moment an abandonment or the slightest infraction of a policy, which appeals to them as being founded not only upon legitimate national desires and requirements, but upon the highest interests of peace and progress throughout the world."

Such a doctrine may conceivably result in many wars in the future. It is just that disposition which leads to war. Note the tone: "not for a single moment"; "the slightest infraction." There is, however, no blame to be attached to the United States; far from it: indeed, we believe that perhaps no nation more clearly comprehends the nature of the problems which fall upon the shoulders of a great State, *nolens-volens*, or is more determined to bear those burdens in the interests of civilisation and progress.. But it would be deceiving ourselves to think that the United States can prosecute its mission without war. Arbitration will do nothing to further their ideals. An instance of great significance is given by Captain Mahan, who also was a representative at the Hague Conference. He pictures the state of matters in Cuba. He asks was there any obligation upon a neighbouring State to put an end to the anarchy? "Absolutely"—to use his own words—"justifiable, nay imperative, as most of us believe our action to have been, when tried at the bar of conscience, no arbitral court acceptable to the two nations, would have decided as our own conscience did. A European diplomatist of distinguished reputation, of a small nation likeliest to be unbiassed, so said to me personally, and it is known that more than one of our own ablest international lawyers held that we were acting in defiance of International Law as it

now exists. . . . Decision must have gone against us, so these men think, on the legal merits of the case."

Such a quotation will serve in the meantime to show that arbitration in itself is inadequate to solve some questions, and the Hague Conference proved that the nations of the earth recognised the fact. A complete substitute for the "droit de force" has not been found.

But, as regards the advance made, there can be no two opinions. The permanent Court and the forty treaties which support it are the beginning of a new era. The Court will represent the common conscience of civilised peoples. It is the beginning of the establishment of a world-wide sentiment of justice; and its actual place in history will be seen to be of greater and greater importance as the years roll on.

On July 29th, 1899, M. de Stael closed the first Peace Conference with the words, "Messieurs, la séance est levée."

The Second Hague Conference.

The unexpected results of the First Hague Conference inspired the Powers with a desire to co-operate in bringing about a second meeting to still further consolidate its predecessor's labours, and, if necessary, to initiate new measures bearing upon international relations. At the time of writing, the Second Conference has not yet completed its task but the end is now near and it is possible to estimate the usefulness of its work.

Apart from a false hope inspired by somewhat futile articles and speeches of the Prime Minister,[1] the thing most desired by all lovers of peace was the establishment of a Permanent Court. In the discussion that took place, the United States persistently urged the claim that the future Court should be a Court of Justice, rather than a Court of

[1] Sir Henry Campbell-Bannerman.

Arbitration. Such a demand is natural, in as much as the Supreme Court of America is regarded by all men as a triumph in social organisation and is a tolerably good precedent for a World Court. The Powers were easily won over : nothing was simpler than to arrange for its organisation, its procedure, its competence, yet it failed to materialise. The stumbling block was the selection of the judges; suggestion after suggestion was made to reconcile the antagonistic claims of the Great Nations, but all in vain. It was impossible to accede to the demand of the Great Powers that their judges should be constantly on the bench, and at the same time preserve the fundamental principle of international law, that all sovereign independent States are equal.

It may be recalled that Germany alone prevented the acceptance by the First Hague Conference of the principle of compulsory arbitration. Baron Marshall, who has been the outstanding figure of the Conference, indicated that German opposition was at an end. Hence, the American delegates introduced a treaty binding the Signatory Powers to compulsory arbitration upon all disputes which did not involve questions affecting national honour, independence, vital interests or the interests of third parties. A further and important exception was made, viz., that the reference to arbitration must, in all cases, be governed by the laws and constitution of the State. This meant for the United States, for instance, that no reference to arbitration was at all obligatory unless the Senate agreed to permit it. Even to a Conference of men, cautious to a degree and impatient of anything savouring of revolution, this so-called Treaty of Obligatory Arbitration was seen to be absurd. It was naturally rejected and Portugal came forward with an alternative treaty which was, in fact, the treaty recommended by the Interparliamentary Union. Twenty subjects were specified upon which the Powers agreed to waive the

"droit de force." These subjects were mainly concerned with the interpretation of existing conventions dealing with postal, railway, telegraph and other matters.

Germany seemed determined to make up for past delinquency. She rejected this treaty as a sham, upon the ground that such matters as it was concerned with, never had and never would throw the slightest cloud upon the pacific relations of the nations of the world—an objection perfectly valid and instructive, inasmuch as it voices the belief of many thinking men that no compulsory arbitration treaty is likely to be signed which will reconcile conflicting political interests. The German proposal was to refer the matter back for discussion and not kill a good principle by representing it by a sham. A further proposal was the Swiss Tableau, by which any two Powers could arrange between themselves the subjects upon which they were willing to accept compulsory arbitration. It seems likely that the Conference will accept the United States proposal, combined with the Portuguese Treaty, *i.e.*, a convention embodying the exception, "national honour," etc., and the various subjects, outlined in the other treaty, upon which the principle is admitted.

Every arbitration is preceded by a "compromis," *i.e.*, a statement of the case. Germany, therefore, acutely pointed out that, as in the past, the nation which was anxious to evade a reference to arbitration, need only fail in drawing up a "compromis," to attain its end. Hence Baron Marshall desired to give the Hague Court the power to draw up a "compromis" on the application of one of the parties. Great Britain pointed out the inherent difficulty and injustice in thus conferring a right of drawing up a compulsory "compromis" upon any Court, in as much as the result of an arbitration usually depends upon the framing of the terms of reference: hence, the objection to transferring the responsibility.

The "Commission d'Enquête" established by the First Conference was again before the delegates. It is curious that the two parties to the great "Dogger Bank" Commission blocked each other's attempts to amend the articles relating to these Inquiry Commissions.

Much has been heard, and much written, during the present sitting at the Hague, about the Drago Doctrine. It is named after Dr. Drago of Argentina, who proclaimed the principle that State debts should never be collected by force. The occasion of the promulgation of this doctrine was the joint expedition to Venezuela to enforce the settlement of the claims of its bondholders. It was the American Government which undertook to pilot the principle through the Conference, though with an appendix which is known as the Porter Proposition, to the effect that contractual debts should not be collected by force unless arbitration had been refused or an arbitral award ignored. The combined proposition will in all probability be accepted by the Powers: its greatest utility will be that it will make borrowing by unscrupulous governments a matter of extreme difficulty, in as much as it will be impossible for the bondholders to bring pressure to bear upon their ministers to exact payment at the point of the bayonet.

Italy attempted to pass the old device of denying loans, in a neutral market, to a State which went to war before exhausting all pacific means. Japan, strange to say, supported, but the opposition of Great Britain killed the project. The incident has only enforced the conviction that it is both unwise and unnecessary to enforce the recommendations of the Court by any other sanction that that of national conscience and public opinion. The vexed question of Sanctions should now be settled once and for all.

One of the most discouraging features of international relations at the present time is the increase of armaments.

The "pious wish," to which Sir Edward Fry invited the Conference, in no way modifies the gravity of the situation. The treaty of disarmament between Chili and Argentina expires in 1908 and will not be renewed: no longer will Peace Congresses be in the position to gloat over this sweet morsel of pacific advance, but will have to frame suitable denunciatory addresses: Brazil is building warships at breakneck speed and bids fair to assume the leadership of Latin-America, and thereby lessen the prestige of the United States: the latter is bent on doubling her fleet in order to police suitably the Pacific seaboard, while the old frantic race in naval and military expenditure in Europe is being greatly accelerated. Thus the timid offer of Great Britain to submit its shipbuilding programme in advance to the other Powers was still-born, and the hopes of the British people, legitimately conceived after the splendid speeches of Sir Edward Grey and Sir Henry Campbell-Bannerman, have been shattered. The lesson, surely, is that those who know should refrain from deceiving, and thereby alienating the sympathy of those who do not know.

The Convention with regard to Floating Mines, drawn up by the Conference, is an almost useless document. Floating mines which do not sink within one hour of being placed in the sea were forbidden, but the anchored mine, which as a rule drifts great distances and cannot be recovered, was made immune from restriction.

The agitation for an International Prize Court has at last been successful. It has been observed above how anomalous it is, from the point of view of International Justice, to permit the captor of a prize at sea to be the sole judge of the lawfulness of that capture, especially as neutral ships are often concerned and the law of contraband is so chaotic. The Conference established a Court, but, in contrast with its usual thoroughness, without a code. The judges will

number fifteen, eight being the allotment to the Great Powers. This portion of the Conference's labours marks a great advance. The decision of the Court is final and an appeal to it may be made in every case, thus eliminating the national element in Prize Courts altogether. In Mr. W. T. Stead's words : " It is a great consecration of the principle that belligerents must bow to the authority of neutrals even as to the legitimacy of their own war-like acts."[1]

It was attempted to define the Law of Contraband, but this was found to be impossible, in as much as conditional contraband is, on the interpretation of some of the Powers, merely a circumlocution for " everything." Failure also dogged the footsteps of those who tried to give precision to the Law of Blockade.

The question of Privateering in its modern form was before the Conference. A Convention was agreed to as to the conditions necessary to convert a merchant ship into a cruiser, but the vital question in this connection was whether such transformation could be performed on the high seas outwith the territorial waters of the belligerent. A curious situation was produced. France, Germany and Russia declared it to be their inalienable right to effect the aforesaid change when and where they pleased. This assertion produced a declaration from Great Britain that she will treat all merchant ships transformed into cruisers upon the high seas as pirates : and there the matter rests.

Such is roughly the work of the Second Hague Conference. Much has been done that will be of the greatest service in maintaining smoothness and harmony in the working of international relations, but nothing has been accomplished which makes any modification necessary in what we have said concerning arbitration. Indeed it merely reinforces our conviction that that which makes for

[1] *Review of Reviews*, Oct. 1907, p. 353.

the solidification of federal interests increases the scope of arbitration, but that, on the other hand, as long as nations continue as separate entities to have clashing ideals, aims and purposes, arbitration will fall far short of its ideal fruition.

CHAPTER XIV.

Conclusion.

We have come within sight of the end. There is one huge misconception in peace literature which we must notice before finally summing up. Revon, in one of his animated passages, has the following: "Le respect de la personne humaine; voila la seule base de tout justice; c'est la règle entre individus; ce ne peut être l'erreur entre groupes sociaux. Transportez les principes du juste, du droit national au droit des gens; ils ne changeront pas de nature. Le prétendu droit de guerre n'est qu'une absurde exception au droit commun des modernes."[1]

Again, with equally exaggerated language and false sociology, the Congress of Rome in 1891 published the resolution, "Le principe des droits et de la morale des peuples est semblable à celui des droits et de la morale des individus—nul n'ayant le droit de se faire justice lui-même, aucun Etat ne peut déclarer la guerre à un autre."[2]

Is this sense or nonsense? The question is, to be clear, Is there any distinction between the internal aspect and the external aspect of a modern State? Decidedly there is. We may leave the question whether the State created law,

[1] "Respect for the human person is the only basis of all justice; it is the rule among individuals; it cannot be a mistake between social groups. Transport the principles of national right and justice to International Law and their nature is not changed. The falsely called right of war is only an absurd exception to modern common law.

[2] "The principle of right and morality for nations is identical with that of right and morality for individuals. As no one has the right to exact justice for himself, no state has the power to declare war upon another."

though that seems evident from the consideration that law is nothing but a relation, which could not arise until men were in some kind of rudimentary association. This however, may be laid down as fundamental. The State is only an individual by a loose kind of metaphor. It is of quite a different nature from the individuals which compose it and has, in consequence, other rights and other duties. Individuals are part of a single organisation; their co-operation secures its development and its life. Each unit in the state is subordinate to a greater power than his own; but the state by its jealous watch over its sovereignty is in a different position from the individual. The internal and external aspects of the State become quite dissimilar. The only ruling law imposed upon the State is the law of preservation—the struggle for continued existence: the only modifying tendency being the natural one we have noted so frequently, that towards association. This latter law often becomes strong enough to lead to federation, which abrogates the action of the law of preservation between the associated units, only to make stronger the law imposed by nature upon the whole group, as against similar states.

There follows from this the corollary that the morality of the state and the morality of the individual are quite different. The friends of peace will not see this truth. Their answer is that to shift the responsibility upon the State is cowardly and immoral. The couplet which brings out this spirit is to be found in a Peace Pamphlet of this year.

> "Guv'ment ain't to answer for it
> God 'll send the bill to you."

Yet they are wrong. The state is not a mere aggregation of all the subjects, it is something more, an emanation from their co-operation and organisation, a different thing altogether, with divergent needs, with greater ambitions, with vaster hopes.

Molinari has attempted to explain it by making political morality the morality of the Government. The interest of the Government, which must be understood to mean the class which exercises the power of the State, implies first of all those rules and laws which secure it the continued possession of its domain, and, whenever circumstance permits, its aggrandisement. The second need of the governing class is internal peace. The latter need, in his opinion, is the more urgent, which leads to a stricter morality. The rules imposed upon the individual, for instance, forbid the taking of life or the destruction of property—why?—to preserve the State. The laws which guide the external relations of States do not forbid the taking of life or the destruction of property : the object is the same as before—the conservation of the nation.

Here we see clearly that Molinari recognises, what history teaches, that morality varies according to the point of view whether political or private. Professor Ritchie maintained exactly the same position. "Arbitration," he says in his War and Peace, "about frontiers is not litigation about ownership : civilised sovereignty does not mean the same thing as ownership of property. It is mere careless rhetoric when acquisition of new territory is spoken of as "robbery" or "burglary" : individual property rights may not be disturbed in the least, and may even be better secured than they were before. It is abstract thinking if questions of sovereignty are suffered to be settled by ancient documents, without regard to the interests and convenience of actual human beings."

But Revon exclaims "rien de plus vrai," after citing Girardin's passage beginning "La guerre, c'est le meurtre, la guerre c'est le vol . . ."[1]

Our argument, so far, has been preparatory to that

[1] "War is murder, war is theft . . ."

conception by the peace writers of the provision of a supreme tribunal to settle the disputes of nations by its judgments, thereby relieving the nations of defending their own causes, just as the law takes away this task from the individual citizen. This idea is widespread and by no means modern. It is, however, based upon two fallacies. The citizen submits to force. To an unjust law he bows, not because he consents to the wrong that is being done to him, but because he is compelled to yield obedience. There is, however, no force to make a nation give way, unless they themselves impose it; they acquiesce in wrong if they knowingly submit to an unjust decision of a tribunal set up by themselves. As Captain Mahan points out, an antecedent promise to accept such decisions does not help matters. The wrongdoing of an individual, because of a previous promise, does not relieve the conscience thus fettered. For the individual or the nation, he continues, arbitration is not possible where the decision may violate conscience.

The second fallacy in this assimilation of the State to the individual, in the matter of submission to law, is still more important. The law of the land cannot relieve the citizen of responsibility before his conscience, however overwhelming its force. Still less can any tribunal free a State from its obligation to do right, and more particularly because the State retains the power of asserting the right which the citizen has lost. Occasions do arise when conscience demands resistance to the law. The State still more has need to keep its conscience free, so that it may decide according to its sense of right upon any question that may present itself.

This argument, to our mind, is conclusive once and for all upon the necessity of the reservation "vital interests and national honour," that is to be found in most arbitration

treaties, to the great dissatisfaction of the Peace Congresses.

The time, however, has come for a few concluding words. Many important questions must be left (and one especially that is worthy of full treatment—the influence of the spread of democratic institutions upon war, and the attitude of continental socialists to it), for time and space forbid that they should be handled.

Arbitration, then, springs up among nations under certain conditions. These nations must first of all be almost equal in strength, the ambitions of any one to conquer the others must have been checked and finally eliminated. On the other hand a tendency toward federation must be in progress and a public opinion unfavourable to war must be developed —hence our parallel treatment of arbitration and the evidence for a peaceful feeling among men. War between these States must come to be regarded with a feeling almost of horror and as an inexplicable thing, almost like fratricide.

The time at which arbitration appears in the long line between absolute non-relationship and federation we have noted, the causes which bring it about, and its limits, but *we do not actually know yet what arbitration is.*

When a group of nations come into relationship of a constant kind, there springs up there and then the embryonic organisation which will finally result in federation. The judicial system of this half-organisation is international law, which, though at first uncertain and without sanction, even of a moral kind, gradually makes progress. To-day, most parts of it are fixed, and the codification of it seems not far distant.

In this embryonic organisation we have now to find a place for arbitration. Evidently it represents Justice. It should develop, from day to day get more and more influence,

until, under normal conditions, it should become the tribunal of a real federation.

But what of the Future? Its future we see is bound up in that of this embryonic organisation which, in ordinary course, should come to a vigorous life through the centuries. To study arbitration, then, forward, to forecast its future evolution, is not a possible task, unless we can also prophesy the course that the present quasi-federation of civilised nations will take. We are powerless to pierce the veil of futurity. The present century may hold deep in its bosom this federation of Europe: it may give birth to another Rome, which will cut short the road to union by conquest: it may produce that which will make of the twentieth century but a reflection of the sixteenth, when nations leapt at each other's throats and forgot the sweet dream of peace.

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